

VOLUME 1
Titles 1 through 17

1987
REVISED CODE OF WASHINGTON

Published under authority of chapter 1.08 RCW.

Containing all laws of a general and permanent nature through the 1987 3rd extraordinary session, which adjourned sine die October 10, 1987.

REVISED CODE OF WASHINGTON
1987 Edition

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CERTIFICATE

The 1987 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.

(signed)
RAYMOND W. HAMAN, Chairman,
STATUTE LAW COMMITTEE

PREFACE

Numbering system: The number of each section of this code is made up of three parts, in sequence as follows: Number of title; number of chapter within the title; number of section within the chapter. Thus RCW 1.04.020 is Title 1, chapter 4, section 20. The section part of the number (.020) is initially made up of three digits, constitutes a true decimal, and provides a facility for numbering new sections to be inserted between old sections already consecutively numbered, merely by adding one or more digits at the end of the number. In most chapters of the code, sections have been numbered by tens (.010, .020, .030, .040, etc.), leaving nine vacant numbers between original sections so that for a time new sections may be inserted without extension of the section number beyond three digits.

Citation to the Revised Code of Washington: The code should be cited as RCW; see RCW 1.04-.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

History of the Revised Code of Washington; Source notes. The Revised Code of Washington was adopted by the legislature in 1950; see chapter 1.04 RCW. The original publication (1951) contained material variances from the language and organization of the session laws from which it was derived, including a variety of divisions and combinations of the session law sections. During 1953 through 1959, the Statute Law Committee, in exercise of the powers contained in chapter 1.08 RCW, completed a comprehensive study of these variances and, by means of a series of administrative orders or reenactment bills, restored each title of the code to reflect its session law source, but retaining the general codification scheme originally adopted. An audit trail of this activity has been preserved in the concluding segments of the source note of each section of the code so affected. The legislative source of each section is enclosed in brackets [] at the end of the section. Reference to session laws is abbreviated; thus "1891 c 23 § 1; 1854 p 99 § 135" refers to section 1, chapter 23, Laws of 1891 and section 135, page 99, Laws of 1854. "Prior" indicates a break in the statutory chain, usually a repeal and reenactment. "RRS or Rem. Supp.—" indicates the parallel citation in Remington's Revised Code, last published in 1949.

Where, before restoration, a section of this code constituted a consolidation of two or more sections of the session laws, or of sections separately numbered in Remington's, the line of derivation is shown for each component section, with each line of derivation being set off from the others by use of small Roman numerals, "(i)," "(ii)," etc.

Where, before restoration, only a part of a session law section was reflected in a particular RCW section the history note reference is followed by the word "part."

"Formerly" and its correlative form "FORMER PART OF SECTION" followed by an RCW citation preserves the record of original codification.

Double amendments: Some double or other multiple amendments to a section made without reference to each other are set out in the code in smaller (8-point) type. See RCW 1.12.025.

Index: Titles 1 through 91 are indexed in the RCW General Index. Separate indexes are provided for the Rules of Court and the State Constitution.

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are no longer carried in place. They are now tabulated in numerical order in the table entitled "Disposition of former RCW sections."

Codification tables: To convert a session law citation to its RCW number (for Laws of 1951 or later) consult the codification tables. A similar table is included to relate the disposition in RCW of sections of Remington's Revised Statutes.

Errors or omissions: (1) Where an obvious clerical error has been made in the law during the legislative process, the code reviser adds a corrected word, phrase, or punctuation mark in [brackets] for clarity. Such additions do not constitute any part of the law.

(2) Although considerable care has been used in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. As such errors are detected or are believed to exist in particular sections, by those who use this code, it is requested that a note citing the section involved and the nature of the error be mailed to: Code Reviser, Legislative Building, Olympia, WA 98504, so that correction may be made in a subsequent publication.

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68. Cemeteries, morgues and human remains
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Title 1

GENERAL PROVISIONS

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- 1.08** Statute law committee (Code reviser).
- 1.12** Rules of construction.
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Chapter 1.04 THE CODE

Sections

- 1.04.010 Revised Code of Washington enacted.
- 1.04.013 1950 Supplement enacted.
- 1.04.014 Numbering system adopted—Application.
- 1.04.015 Numbering new sections, chapters—Corrections.
- 1.04.016 Expansion of numbering system—Decimal factor.
- 1.04.020 Code as evidence of the law—Rule of construction—Effect of amendment.
- 1.04.021 Rule of construction—Prima facie law.
- 1.04.030 New laws to be added to code.
- 1.04.040 Code may be cited as "RCW."

Code reviser: Chapter 1.08 RCW.

Legislature to amend or repeal laws by reference to code numbers: RCW 1.08.050.

Salaries for public officials to appear in code: RCW 43.03.047.

Statute law committee: Chapter 1.08 RCW.

1.04.010 Revised Code of Washington enacted. The ninety-one titles with chapters and sections designated as the "Revised Code of Washington" and attested by the secretary of the senate and the chief clerk of the house of representatives of the legislature of the state of Washington, are hereby enacted and designated as the "Revised Code of Washington." Said code is intended to embrace in a revised, consolidated, and codified form and arrangement all the laws of the state of a general and permanent nature. [1951 c 5 § 2; 1950 ex.s. c 16 § 1.]

Creation of new code titles authorized, effect: RCW 1.08.015.

1.04.013 1950 Supplement enacted. The titles, chapters, and sections designated as the "1950 Supplement to the Revised Code of Washington" attested by the secretary of the senate and the chief clerk of the house of representatives of the legislature of the state of Washington, and filed with the secretary of state, are hereby enacted and consolidated into and with the Revised Code of Washington. Said 1950 supplement is intended to embrace (1) in a revised and codified form, all those laws of the state of Washington of a general and permanent nature enacted since January 1, 1949, (2) revision and recodification of certain of the titles, chapters,

and sections of the revised code, and (3) application of a new system of numbering to all of the sections and certain of the chapters of the revised code, subject to RCW 1.04.014. [1951 c 5 § 1.]

1.04.014 Numbering system adopted—Application. The system of numbering employed in the 1950 supplement is hereby adopted as the general system to be followed in designating sections of the revised code. Specific numbers, in accordance with such system, are authorized to be assigned to sections of the revised code as follows:

Those chapters and sections of the revised code expressly numbered or renumbered in the 1950 supplement are authorized to be numbered or renumbered to the new number respectively shown in the 1950 supplement. All other sections of the revised code now existing are authorized to be renumbered by tens according to the plan generally used in the 1950 supplement, using the number of the title, the new number, if any, of the chapter in which the section occurs, and adding the digit "0" to the terminal end of the number marking the position of the section within the chapter. The secretary of state shall, before publication of any laws enacted at this session of the legislature which are by their terms expressly amendatory of any section or sections contained in the revised code or the 1950 supplement, renumber each section and correlate the numbers of sections so renumbered, in accordance with this provision, so that each such section when published bears or is referred to by its proper new number. The secretary of state, in publishing the session laws of this thirty-second session of the legislature shall use therein the applicable new numbers of the respective sections so renumbered. [1951 c 5 § 3.]

1.04.015 Numbering new sections, chapters—Corrections. New chapters or sections added to the Revised Code of Washington (as supplemented or modified by the 1950 supplement), as the result of laws enacted at this or subsequent sessions of the legislature, shall be numbered in harmony with said general numbering system, and shall bear such respective numbers in accordance therewith as may be assigned by such official or agency as may be expressly authorized by law so to do.

This section shall not prohibit or prevent the correction by any such official or agency, of the number of any section of the revised code found clearly to be incorrectly numbered or incorrectly correlated with other sections as to number. [1951 c 5 § 4.]

1.04.016 Expansion of numbering system—Decimal factor. It is the intent that under said numbering system the section factor of the section number shall be

treated as a decimal figure, and where new sections must hereafter in codifying be inserted between sections then already consecutively numbered, the proper number for such new section shall be created by the insertion of an additional digit at the terminal end of the number of the section immediately preceding the location at which such new section is to be inserted. [1951 c 5 § 5.]

1.04.020 Code as evidence of the law—Rule of construction—Effect of amendment. The contents of the Revised Code of Washington, after striking therefrom sections repealed or superseded by laws of the state of Washington enacted since January 1, 1949, as the revised code is supplemented or modified in the 1950 supplement, shall establish the laws of this state of a general and permanent nature in effect on January 1, 1951; except, that nothing herein shall be construed as changing the meaning of any such laws and, as a rule of construction, in case of any omissions or any inconsistency between any of the provisions of the revised code as so supplemented or modified and the laws existing immediately preceding this enactment, the previously existing laws shall control. Any section of the Revised Code of Washington (as supplemented or modified by the 1950 supplement) expressly amended by the legislature, including the entire context set out, shall, as so amended, constitute the law and the ultimate declaration of legislative intent. [1951 c 5 § 6.]

1.04.021 Rule of construction—Prima facie law. The contents of said code shall establish prima facie the laws of this state of a general and permanent nature in effect on January 1, 1949, but nothing herein shall be construed as changing the meaning of any such laws. In case of any omissions, or any inconsistency between any of the provisions of said code and the laws existing immediately preceding this enactment, the previously existing laws shall control. [1950 ex.s. c 16 § 2.]

1.04.030 New laws to be added to code. All laws of a general and permanent nature enacted after January 1, 1949, shall, from time to time, be incorporated into and become a part of said code. [1950 ex.s. c 16 § 3.]

1.04.040 Code may be cited as "RCW." The code may be cited by the abbreviation "RCW." [1950 ex.s. c 16 § 4.]

Chapter 1.08

STATUTE LAW COMMITTEE (CODE REVISER)

Sections

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Administrative procedures, reviser's powers and duties: Chapter 34.04 RCW.

State higher education administrative procedure act, reviser's duties: Chapter 28B.19 RCW.

Statute law committee to publish session laws: Chapter 44.20 RCW.

Voter registration, copy of state-wide computer tape provided to statute law committee: RCW 29.04.160.

1.08.001 Statute law committee created—Membership. There is created a permanent statute law committee consisting of twelve lawyer members as follows: A lawyer member of the legislature, ex officio, designated by the speaker of the house of representatives with the concurrence of the president of the senate; the chairman of the senate judiciary committee, ex officio, or a member thereof who belongs to the same political party as the chairman, and one other member thereof who belongs to the other major political party, to be appointed by the chairman; the chairman of the house judiciary committee, ex officio, or a member thereof who belongs to the same political party as the chairman, and one other member thereof who belongs to the other major political party, to be appointed by the chairman; five lawyers admitted to practice in this state, designated by the board of governors of the Washington State Bar Association; a judge of the supreme court or a lawyer who has been admitted to practice in this state, recommended by the chief justice of the supreme court; and a lawyer member at large appointed by the governor. All such designations or appointments, shall except as provided in RCW 1.08.003, be made as above provided prior to April 1, 1959. [1967 ex.s. c 124 § 1; 1959 c 95 § 1; 1955 c 235 § 1; 1953 c 257 § 1; 1951 c 157 § 1.]

Severability—1955 c 235: "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." [1955 c 235 § 10.] For codification of 1955 c 235, see Codification Tables, Volume 0.

1.08.003 Terms of members—Filling vacancies.

The terms of the members designated by the State Bar Association, shall be for six years. The term of the member recommended by the chief justice shall be at the pleasure of the supreme court. The term of the governor's appointee shall be four years. The term of the senate and house judiciary committee members shall be two years, from April 1st following the adjournment of the regular session of the legislature in each odd-numbered year starting in 1955 and to and including the thirty-first day of March in the succeeding odd-numbered year.

The term of any ex officio member, other than senate and house judiciary committee members shall expire upon expiration of tenure of the position by virtue of which he is a member of the committee. Vacancies shall be filled by designation, appointment, or ex officio in the same manner as for the member so vacating, and if a vacancy results other than from expiration of a term, the vacancy shall be filled for the unexpired term.

Of the members to be designated by the Washington State Bar Association, the term of one member shall expire March 31, 1959, the terms of two members shall expire March 31, 1961, the terms of two members shall expire March 31, 1963, and the term of one member shall expire March 31, 1965: *Provided*, That this 1959 amendment shall not affect the present terms of present members. [1959 c 95 § 2; 1955 c 235 § 2; 1953 c 257 § 2; 1951 c 157 § 2.]

1.08.005 Compensation and expenses of members.

For attendance at meetings of the committee or in attending to such other business of the committee as may be authorized thereby, each legislative member of the committee shall receive the per diem and travel allowances provided for such members by RCW 44.04.120, and each other member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 6; 1969 c 21 § 1; 1951 c 157 § 3.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

1.08.007 Committee meetings—Quorum—Secretary.

The committee shall meet at the call of the senate judiciary chairman as soon as feasible after April 1, 1953. The committee shall from time to time elect a chairman from among its members, and adopt rules to govern its procedures. Four members of the committee shall constitute a quorum for the transaction of any business but no proceeding of the committee shall be valid unless carried by the vote of a majority of the members present. The reviser or a member of his staff shall act as secretary of the committee. [1953 c 257 § 3; 1951 c 157 § 4.]

1.08.011 Employment of code reviser and staff—Supervision.

The committee shall, as soon as practicable after April 1, 1951, employ on behalf of the state, and from time to time fix the compensation of a competent

code reviser, with power to terminate any such employment at any time, subject to contract rights. The committee shall also employ on behalf of the state and fix the compensation of such additional legal and clerical assistance to the code reviser as may reasonably be required under this chapter. The committee shall have general supervision and control over the functions and performance of the reviser. [1951 c 157 § 5.]

1.08.013 Code reviser defined. Code reviser shall mean any lawyer or law publisher employing competent lawyers, each deemed by the committee to be qualified to compile the statutory law of the state of Washington as enacted by the legislature into a code or compilation of laws by title, chapter and section, without substantive change or alteration of purpose or intent. [1951 c 157 § 6.]

1.08.015 Codification and revision of laws—Scope of revision. Subject to such general policies as may be promulgated by the committee and to the general supervision of the committee, the reviser shall:

(1) Codify for consolidation into the Revised Code of Washington all laws of a general and permanent nature heretofore or hereafter enacted by the legislature, and assign permanent numbers as provided by law to all new titles, chapters, and sections so added to the revised code.

(2) Edit and revise such laws for such consolidation, to the extent deemed necessary or desirable by the reviser and without changing the meaning of any such law, in the following respects only:

(a) Make capitalization uniform with that followed generally in the revised code.

(b) Make chapter or section division and subdivision designations uniform with that followed in the revised code.

(c) Substitute for the term "this act," where necessary, the term "section," "part," "code," "chapter," or "title," or reference to specific section or chapter numbers, as the case may require.

(d) Substitute for reference to a section of an "act," the proper code section number reference.

(e) Substitute for "as provided in the preceding section" and other phrases of similar import, the proper code section number references.

(f) Substitute the proper calendar date for "effective date of this act," "date of passage of this act," and other phrases of similar import.

(g) Strike out figures where merely a repetition of written words, and substitute, where deemed advisable for uniformity, written words for figures.

(h) Rearrange any misplaced statutory material, incorporate any omitted statutory material as well as correct manifest errors in spelling, and manifest clerical or typographical errors, or errors by way of additions or omissions.

(i) Correct manifest errors in references, by chapter or section number, to other laws.

(j) Correct manifest errors or omissions in numbering or renumbering sections of the revised code.

(k) Divide long sections into two or more sections, and rearrange the order of sections to conform to such logical arrangement of subject matter as may most generally be followed in the revised code when to do so will not change the meaning or effect of such sections.

(l) Change the wording of section captions, if any, and provide captions to new chapters and sections.

(m) Strike provisions manifestly obsolete.

(3) Create new code titles, chapters, and sections of the Revised Code of Washington, or otherwise revise the title, chapter and sectional organization of the code, all as may be required from time to time, to effectuate the orderly and logical arrangement of the statutes. Such new titles, chapters, and sections, and organizational revisions, shall have the same force and effect as the ninety-one titles originally enacted and designated as the "Revised Code of Washington" pursuant to the code adoption acts codified in chapter 1.04 RCW. [1961 c 246 § 1; 1953 c 257 § 4; 1951 c 157 § 7.]

1.08.016 Code correction—Committee orders. The committee may at any time by order correct any section or portion of the code in any of the respects enumerated in RCW 1.08.015. Orders shall be numbered consecutively and signed by the committee chairman and each order shall be followed by an explanatory note reciting the reason therefor.

Unless otherwise prescribed in the orders, each shall become effective ninety days after

(1) signing of the order; and

(2) filing a summary thereof with the board of governors of the State Bar Association; and

(3) the filing thereof with the secretary of state. [1953 c 257 § 5.]

1.08.017 May omit certain sections of acts. The reviser may omit from the code all titles to acts, enacting and repealing clauses, preambles, declarations of emergency, and validity and construction sections unless, in a particular instance, it may be necessary to retain such to preserve the full intent of the law. The omission of validity or construction sections is not intended to, nor shall it change, or be considered as changing, the effect to be given thereto in construing legislation of which such validity and construction sections were a part. Any section so omitted, other than repealing, emergency, or validity provisions, shall be referred to or set forth as an annotation to the applicable sections of the act as codified. [1955 c 235 § 3; 1951 c 157 § 8.]

1.08.020 Code index. The reviser, as soon as practicable, shall compile and thereafter maintain a comprehensive index and from time to time prepare for publication supplements thereto. [1953 c 257 § 7.]

1.08.021 Historical records. The reviser shall prepare and maintain full historical records showing the enactment, amendment, revision, supersession, and repeal of the various sections of the revised code. [1951 c 157 § 9.]

1.08.023 Annotations. The reviser may prepare and maintain complete annotations of court decisions construing the statutes of this state. [1951 c 157 § 10.]

1.08.024 Inclusion in code of rules of court. The committee may provide for inclusion in the published sets of the code the rules of court promulgated by the supreme court. [1953 c 257 § 8.]

1.08.025 Improvement of statutes. The committee, or the reviser with the approval of the committee, shall from time to time make written recommendations to the legislature concerning deficiencies, conflicts, or obsolete provisions in, and need for reorganization or revision of, the statutes, and shall prepare for submission to the legislature, legislation for the correction or removal of such deficiencies, conflicts or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state as the public interest or the administration of the subject may require.

Such or similar projects may also be undertaken at the request of the legislature, legislative interim bodies, and the judicial council and if such undertaking will not impede the other functions of the committee.

All such proposed legislation shall be annotated so as to show the purposes, reasons, and history thereof. [1983 c 52 § 2; 1959 c 95 § 3; 1951 c 157 § 11.]

Law revision commission: Chapter 1.30 RCW.

1.08.026 Examination of code—Hearings—Recommendations to legislature. The committee also shall examine the revised code and from time to time submit to the legislature proposals for enactment of the several titles, chapters and sections thereof, to the end that, as expeditiously as possible, the revised code, and each part thereof, shall constitute conclusive, rather than prima facie evidence of the law. Each such proposal shall be accompanied by explanatory matter. The committee may hold hearings concerning any such proposal or concerning recommendations formulated or to be formulated in accordance with RCW 1.08.025. Proposals or recommendations approved by the committee shall be submitted to the chairman of the house or senate judiciary committee at the commencement of the next succeeding session of the legislature. [1959 c 95 § 4; 1953 c 257 § 9.]

1.08.027 Bill drafting service. The reviser shall be in charge of and shall at all times maintain an expert bill drafting service for the use and benefit of the legislature, its committees and its members. Prior to any session thereof, the legislature shall provide quarters convenient to both houses and shall augment the reviser's staff with such additional legal and clerical assistance as may be needed to carry out the bill drafting functions of the legislature and pay the cost of such additional staff. Such services shall be confidential and nonpartisan and no member of the bill drafting staff shall advocate for or against any legislative measure. [1953 c 257 § 6; 1951 c 157 § 12.]

Initiative measures, review by code reviser: RCW 29.79.015.

1.08.028 Opinions as to validity or constitutionality. Neither the reviser nor any member of his staff shall be required to furnish any written opinion as to the validity or constitutionality of any proposed legislation, which he may be requested to draft or prepare, nor shall any member of the committee be required to pass upon the constitutionality of any matter submitted to it for consideration. [1955 c 235 § 4.]

1.08.031 Information service to legislators. The reviser shall, to the extent reasonably feasible through available facilities and public sources of information, provide objective and factual information in writing to and upon request of any member of the legislature relative to any matter which is or may be the subject of or involved in, legislation. [1951 c 157 § 13.]

1.08.033 Reviser's office location. The department of public institutions shall provide suitable office and storage space and facilities for the reviser and his staff at Olympia, at a location convenient to the legislature and to the state law library. [1955 c 235 § 5; 1951 c 157 § 15.]

Reviser's note: Certain powers and duties of department of public institutions transferred to department of general administration: See RCW 43.19.015.

1.08.037 Publication of code—Specifications—Certificate of compliance. The committee shall from time to time formulate specifications relative to the format, size and style of type, paper stock, number of volumes, method and quality of binding, contents, indexing, and general scope and character of footnotes, and annotations, if any, for any publication for general use of the revised code and supplements thereto. No such publication or the contents thereof, other than such temporary edition as may expressly be authorized by the legislature, shall be received as evidence of the laws of this state unless it complies with such specifications of the committee as are current at the time of publication, including compliance with the section numbering adopted by the reviser under supervision of the statute law committee. If a publication complies with such specifications, the committee shall furnish a certificate of such compliance, executed on behalf of the committee by its chairman, to the publisher, and the certificate shall be reproduced at the beginning of each such volume or supplement.

Upon request of any publisher in good faith interested in publishing said code, the committee shall furnish a copy of its current specifications and shall not during the process of any bona fide publication of said code or supplements modify any such specifications, if such modification would result in added expense or material inconvenience to the publisher, without written concurrence therein by such publisher. [1955 c 235 § 6; 1953 c 257 § 14; 1951 c 157 § 14.]

1.08.038 Publication, sale, and distribution of code and supplements—Reprints. The statute law committee shall publish, sell and distribute, and arrange for the

publication, sale and distribution of the Revised Code of Washington and of supplements thereto and of such other materials as in their discretion may be incorporated in or appended to the code. They may republish, reprint or authorize the republishing or reprinting of the code or any portion thereof. [1955 c 235 § 7; 1953 c 257 § 11.]

1.08.039 Publication, sale, and distribution of code and supplements—Contracts or other arrangements. The committee may enter into contracts or otherwise arrange for the publication and/or distribution, provided for in RCW 1.08.038, with or without calling for bids, by the public printer or by private printer, upon specifications formulated under the authority of RCW 1.08.037, and upon such basis as the committee deems to be most expeditious and economical. Any such contract may be upon such terms as the committee deems to be most advantageous to the state and to potential purchasers of such publications. The committee shall fix terms and prices for such publications. [1955 c 235 § 8; 1953 c 257 § 12.]

1.08.0392 Publication, sale, and distribution of code and supplements—Statute law committee publications account created—Purpose—Disbursements. For the purposes of financing the production and sale of such of its publications as in the judgment of the statute law committee may be advantageously financed by the use of revolving fund moneys, there is hereby created, and the committee is authorized to maintain, a revolving fund to be known as statute law committee publications account. None of the provisions of RCW 43.01.050 shall be applicable to said fund nor to any moneys received or collected by the committee for publications financed by said fund.

All moneys shall be paid from said account by check or voucher in such form and in such manner as shall be prescribed by the committee. [1961 c 246 § 2.]

1.08.040 Certification—Official code—Prima facie evidence. The Revised Code of Washington containing the certificate of the temporary code committee and any supplement or addition thereto or reprint edition thereof, which contains the certificate of the statute law committee referred to in RCW 1.08.037, shall be deemed official, and shall be prima facie evidence of the laws contained therein. [1955 c 5 § 2; 1953 c 257 § 15; 1951 c 157 § 16; 1941 c 149 § 3; Rem. Supp. 1941 § 152–38.]

1.08.050 Amendment, repeal to include code numbers—Assignment of code numbers. The legislature in amending or repealing laws shall include in such act references to the code numbers of the law affected. The reviser shall assign code numbers to such permanent and general laws as are hereafter enacted at any legislative session. [1959 c 95 § 5; 1955 c 5 § 3; 1951 c 157 § 17. Prior: (i) 1941 c 149 § 4; Rem. Supp. 1941 § 152–39. (ii) 1947 c 282 § 1; Rem. Supp. 1947 § 152–40.]

1.08.060 Loans and exchanges of codes and supplements. The committee may loan sets of the code and materials supplemental thereto

(1) for the use of senate committees, a quantity as required by advice from the secretary of the senate, not to exceed twenty-five sets;

(2) for use of the house committees, a quantity as required by advice from the chief clerk of the house, not to exceed thirty-five sets;

(3) to the state law library for library use;

(4) for use of the reviser's office, as required;

(5) for use of recognized news reporting services maintaining permanent offices at the capitol, three sets.

The committee may exchange copies of RCW for codes or compilations of other states. [1982 1st ex.s. c 32 § 6; 1953 c 257 § 10.]

1.08.070 Legislators to receive codes and supplements. 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 receive one set of the code without charge. All persons receiving codes under the provisions of this section or the sections above referred to shall be entitled to receive supplements to the code 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. [1955 c 235 § 9.]

1.08.110 Publication of Washington state register—Rule-making authority. The statute law committee, in addition to the other responsibilities enumerated in this chapter, shall cause to be published the Washington State Register as created in RCW 34.08.020. The statute law committee and/or the code reviser may adopt such rules as are necessary for the effective operation of such service. [1977 ex.s. c 240 § 2.]

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

1.08.120 Substitution of words designating department or secretary of transportation. For purposes of harmonizing and clarifying the provisions of the statute sections published in the revised code of Washington, the code reviser may substitute words designating the department of transportation or the secretary of transportation, as appropriate, whenever necessary to effect the changes in meaning provided for in RCW 47.68.015 and 47.04.015 or any other act of the 1977 legislature. [1977 ex.s. c 151 § 24.]

Federal requirements—Severability—1977 ex.s. c. 151: See RCW 47.98.070 and 47.98.080.

Chapter 1.12

RULES OF CONSTRUCTION

Sections

1.12.010 Code to be liberally construed.

1.12.020 Statutes continued, when.
1.12.025 Construction of multiple amendments to statutes—
Publication—Decodification of repealed sections.
1.12.026 Construction of statutes—Retrospective application.
1.12.028 Construction of statutes—Internal references as including amendments thereto.
1.12.040 Computation of time.
1.12.050 Number and gender.
1.12.060 Certified mail—Use.
1.12.070 Reports, claims, tax returns, remittances, etc.—
Filing.

1.12.010 Code to be liberally construed. The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction. [1891 c 23 § 1, part; Code 1881 §§ 758, 1686; 1877 p 153 § 763; 1854 p 221 § 504; RRS § 144.]

Reviser's note: (1) This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state."

(2) This section was originally section 504 of the 1854 statute entitled "An act to regulate the practice and proceedings in civil actions." Section 504 of the 1854 statute reads as follows: "The provisions of this act shall be liberally construed and shall not be limited by any rule of strict construction." Identical language appears in Code of 1881 § 1686 relating to probate, and again in Code of 1881 § 758, being part of "An act to regulate the practice and proceedings in civil actions" except that in the latter instance the 1881 codifier changed the words "this act" to read "this code".

1.12.020 Statutes continued, when. The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof. [1891 c 23 § 1, part; Code 1881 §§ 761, 1292, 1681; RRS § 145.]

Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:".

Laws in force continued: State Constitution Art. 27 § 2.

1.12.025 Construction of multiple amendments to statutes—Publication—Decodification of repealed sections. (1) If at any session of the legislature there are enacted two or more acts amending the same section of the session laws or of the official code, each amendment without reference to the others, each act shall be given effect to the extent that the amendments do not conflict in purpose, otherwise the act last filed in the office of the secretary of state in point of time, shall control: *Provided*, That if one or more special sessions of the same legislature shall follow any regular session, this rule of construction shall apply to the laws enacted at either, both, any, or all of such sessions.

(2) If a section of the session laws or of the official code is amended without reference to another amendment of the same section, the code reviser, in consultation with the statute law committee, may publish the section in the official code with all amendments incorporated therein. The publication of the section under this subsection shall occur only if the statute law committee determines that the amendments do not conflict in purpose or effect. Sections so published constitute prima facie evidence of the law but shall not be construed as changing the meaning of any such law.

The code reviser, in consultation with the statute law committee, may decodify a section of the official code which was repealed without reference to an amendment to the section. The decodification of the section shall occur only if the statute law committee determines that the decodification does not conflict with the purpose of the amendment. Any decision of the code reviser, in consultation with the statute law committee, to incorporate amendments in the same section or to decodify a section which was both repealed and amended in the same session shall be clearly noted in the revised code of Washington.

If any conflict arises in the interpretation of a section published or decodified under this subsection, the session law sections shall control. [1983 c 244 § 1; 1980 c 87 § 2; 1974 ex.s. c 87 § 1; 1969 ex.s. c 240 § 1; 1955 c 162 § 1.]

1.12.026 Construction of statutes—Retrospective application. The provisions of RCW 1.12.025 as now or hereafter amended shall apply retrospectively as well as prospectively. [1969 ex.s. c 240 § 2.]

1.12.028 Construction of statutes—Internal references as including amendments thereto. If a statute refers to another statute of this state, the reference includes any amendments to the referenced statute unless a contrary intent is clearly expressed. [1982 c 16 § 1.]

1.12.040 Computation of time. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday or Sunday, and then it is also excluded. [1887 c 20 § 1; Code 1881 § 743; 1854 p 219 § 486; RRS § 150.]

Reviser's note: This section has been enacted at various times as part of "An act to regulate the practice and proceedings in civil actions." However, *Allen v. Morris*, 87 Wash. 268, 274, 151 Pac. 827 (1915); *State ex rel. Evans v. Superior Court*, 168 Wash. 176, 179, 11 P. (2d) 229 (1932); *State v. Levesque*, 5 Wn. (2d) 631, 635, 106 P. (2d) 309 (1940); and *State ex rel. Early v. Batchelor*, 15 Wn. (2d) 149, 130 P. (2d) 72 (1942), treat this section as being of general application.

Rules of court: CR 6(a), RAP 18.6. Cf. RAP 18.22.

1.12.050 Number and gender. Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the masculine gender may be extended to females also. [1891 c 23 § 1, part; Code 1881 §§ 756, 965, 1920; 1877 p 153 § 761; 1857 p 45 § 1; 1854 p 99 § 135 and p 221 § 502; RRS § 148.]

Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:".

Probate, number and gender: RCW 11.02.005(15), (16).

Wrongful death, number and gender: RCW 4.20.005.

1.12.060 Certified mail—Use. Whenever the use of "registered" mail is authorized by this code, "certified" mail, with return receipt requested, may be used. [1961 c 204 § 1.]

1.12.070 Reports, claims, tax returns, remittances, etc.—Filing. Except as otherwise specifically provided by law hereafter:

(1) Any report, claim, tax return, statement or other document required to be filed with, or any payment made to the state or to any political subdivision thereof, which is (a) transmitted through the United States mail, shall be deemed filed and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it; or (b) mailed but not received by the state or political subdivision, or where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing; and in cases of such nonreceipt of a report, tax return, statement, remittance, or other document required by law to be filed, the sender files with the state or political subdivision a duplicate within ten days after written notification is given to the sender by the state or political subdivision of its nonreceipt of such report, tax return, statement, remittance, or other document.

(2) If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States post office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was delivered to the addressee, and the date of registration, certification or certificate shall be deemed the post-marked date.

(3) If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if performed on the next business day. [1967 c 222 § 1.]

Chapter 1.16

GENERAL DEFINITIONS

Sections	
1.16.020	"Fiscal biennium".
1.16.030	"Fiscal year"—School districts and other taxing districts.
1.16.040	"Folio".
1.16.050	"Legal holidays".
1.16.060	"Month" or "months".
1.16.065	"Officer".
1.16.080	"Person" defined.

1.16.020 "Fiscal biennium". The fiscal biennium of the state shall commence on the first day of July in each odd-numbered year and end on the thirtieth day of June of the next succeeding odd-numbered year. The fiscal biennium of those cities and towns which utilize a biennial budget shall commence on the first day of January in each odd-numbered year and end on the thirty-first day of December of the next succeeding even-numbered

year. [1985 c 175 § 2; 1953 c 184 § 2; 1923 c 86 § 1; RRS § 10927.]

Biennial reports: RCW 43.01.035.

Municipal biennial budgets: Chapters 35.34 and 35A.34 RCW.

1.16.030 "Fiscal year"—**School districts and other taxing districts.** August 31st shall end the fiscal year of school districts and December 31st of all other taxing districts. [1975-'76 2nd ex.s. c 118 § 21; 1909 c 76 § 13; RRS § 9963.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.65.400.

1.16.040 "Folio". The term "folio" when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio exceeding a quarter, it shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same. [Code 1881 § 2093; 1869 p 373 § 15; RRS § 500.]

1.16.050 "Legal holidays". The following are legal holidays: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those nonclassified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state

legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordinance or resolution of the local government legislative authority.

The legislature declares that the twelfth day of October shall be recognized as Columbus Day but shall not be considered a legal holiday for any purposes. [1985 c 189 § 1; 1979 c 77 § 1; 1977 ex.s. c 111 § 1; 1975-'76 2nd ex.s. c 24 § 1; 1975 1st ex.s. c 194 § 1; 1973 2nd ex.s. c 1 § 1; 1969 c 11 § 1; 1955 c 20 § 1; 1927 c 51 § 1; RRS § 61. Prior: 1895 c 3 § 1; 1891 c 41 § 1; 1888 p 107 § 1.]

Court business on legal holidays: RCW 2.28.100, 2.28.110.

School holidays: RCW 28A.02.061.

1.16.060 "Month" or "months". The word "month" or "months," whenever the same occurs in the statutes of this state now in force, or in statutes hereinafter enacted, or in any contract made in this state, shall be taken and construed to mean "calendar months." [1891 c 23 § 1, part; Code 1881 § 759; 1877 p 333 § 1; RRS § 149.]

Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:".

1.16.065 "Officer". Whenever any term indicating an officer is used it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer. [Code 1881 § 755; 1854 p 221 § 501; RRS § 147.]

Reviser's note: This section was formerly a part of RCW 42.04.010. It first appeared in "An Act to regulate the practice and proceedings in civil actions" (1854 p 221 § 501), as part of chapter LIV, "Construction". It also appeared as Code of 1881 § 755 in chapter LXVII, "Of Construction", as part of the code of civil procedure.

Criminal code, officer defined: RCW 9A.04.110.

1.16.080 "Person" defined. The term "person" may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual. [1891 c 23 § 1, part; Code 1881 § 964; 1857 p 46 § 1; 1854 p 99 § 134; RRS § 146.]

Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:".

Criminal proceedings, person defined: RCW 9A.04.110.

Declaratory judgments, person defined: RCW 7.24.130.

Eminent domain by cities, person defined: RCW 8.12.020.

Notice to alien property custodian, person defined: RCW 4.28.340.

Wrongful death, person defined: RCW 4.20.005.

Chapter 1.20 GENERAL PROVISIONS

Sections

1.20.010	State flag.
1.20.015	Display of national and state flags.
1.20.020	State tree.
1.20.030	State flower.
1.20.040	State bird.
1.20.045	State fish.
1.20.050	Standard time—Daylight saving time.
1.20.051	Daylight saving time.
1.20.060	Arbor day.
1.20.070	State song.
1.20.071	State song—Proceeds from sale.
1.20.073	State folk song.
1.20.075	State dance.
1.20.080	State seal.
1.20.090	State gem.

Design of state seal: State Constitution Art. 18 § 1.

State boundaries: State Constitution Art. 24 § 1 (Amendment 33).

1.20.010 State flag. The official flag of the state of Washington shall be of dark green silk or bunting and shall bear in its center a reproduction of the seal of the state of Washington embroidered, printed, painted or stamped thereon. The edges of the flag may, or may not, be fringed. If a fringe is used the same shall be of gold or yellow color of the same shade as the seal. The dimensions of the flag may vary.

The secretary of state is authorized to provide the state flag to units of the armed forces, without charge therefor, as in his discretion he deems entitled thereto. The secretary of state is further authorized to sell the state flag to any citizen at a price to be determined by the secretary of state. [1967 ex.s. c 65 § 2; 1925 ex.s. c 85 § 1; 1923 c 174 § 1; RRS § 10964-1, RRS vol. 11, p. 399.]

Reviser's note: Same RRS number was also used for a section dealing with a different subject on page 110 of RRS vol. 11, pocket part.

1.20.015 Display of national and state flags. The flag of the United States and the flag of the state shall be prominently installed, displayed and maintained in schools, court rooms and state buildings. [1955 c 88 § 1.]

Crimes relating to flags: Chapter 9.86 RCW.

Flag exercises in schools: RCW 28A.02.030.

1.20.020 State tree. That certain evergreen tree known and described as the western hemlock (*tsuga heterophylla*) is hereby designated as the official tree of the state of Washington. [1947 c 191 § 1; Rem. Supp. 1947 § 10964-120.]

1.20.030 State flower. The native species, *Rhododendron macrophyllum*, is hereby designated as the official flower of the state of Washington. [1959 c 29 § 1; 1949 c 18 § 1; Rem. Supp. 1949 § 10964-200.]

1.20.040 State bird. The willow goldfinch is hereby designated as the official bird of the state of Washington. [1951 c 249 § 1.]

1.20.045 State fish. The species of trout commonly called "steelhead trout" (*salmo gairdnerii*) is hereby designated as the official fish of the state of Washington. [1969 c 36 § 1.]

1.20.050 Standard time—Daylight saving time. No county, city or other political subdivision of this state shall adopt any provision for the observance of daylight saving time, or any time other than standard, except pursuant to a gubernatorial proclamation declaring an emergency during a period of national war and authorizing such adoption, or unless other than standard time is established on a national basis: *Provided*, That this section shall not apply to orders made by federal authorities in a local area entirely under federal control. [1953 c 2 § 1 (Initiative Measure No. 181, approved November 4, 1952).]

1.20.051 Daylight saving time. At two o'clock antemeridian Pacific Standard Time of the last Sunday in April each year the time of the state of Washington shall be advanced one hour, and at two o'clock antemeridian Pacific Standard Time of the last Sunday in October in each year the time of the state of Washington shall, by the retarding of one hour, be returned to Pacific Standard Time. [1963 c 14 § 1; 1961 c 3 § 1 (Initiative Measure No. 210, approved November 8, 1960).]

1.20.060 Arbor day. The second Wednesday in April of each year is designated as Arbor day. [1957 c 220 § 1.]

1.20.070 State song. The song, music and lyrics, "Washington My Home", composed by Helen Davis, is hereby designated as the official song of the state of Washington. [1959 c 281 § 1.]

1.20.071 State song—Proceeds from sale. All proceeds from the sale of the official song of the state as designated in RCW 1.20.070 shall be placed in the general fund. [1973 1st ex.s. c 59 § 1; 1959 c 281 § 2.]

Effective date—1973 1st ex.s. c 59: See note following RCW 43.79.420.

1.20.073 State folk song. The legislature recognizes that winter recreational activities are part of the folk tradition of the state of Washington. Winter recreational activities serve to turn the darkness of a northwest winter into the dawn of renewed vitality. As the winter snows dissolve into the torrents of spring, the Columbia river is nourished. The Columbia river is the pride of the northwest and the unifying geographic element of the state. In order to celebrate the river which ties the winter recreation playground of snowcapped mountains and the Yakima, Snake, and the Klickitat rivers to the ocean so blue, the legislature declares that the official state

folk song is "Roll On Columbia, Roll On," composed by Woody Guthrie. [1987 c 526 § 4.]

1.20.075 State dance. The square dance is designated as the official dance of the state of Washington. [1979 ex.s. c 10 § 1.]

1.20.080 State seal. The seal of the state of Washington shall be, a seal encircled with the words: "The Seal of the State of Washington," with the vignette of General George Washington as the central figure, and beneath the vignette the figures "1889" and shall be composed as appears in the illustration below:



[1967 ex.s. c 65 § 1.]

1.20.090 State gem. Petrified wood is hereby designated as the official gem of the state of Washington. [1975 c 8 § 1.]

Chapter 1.30

LAW REVISION COMMISSION

Sections

1.30.010	Legislative declaration.
1.30.020	Commission created—Membership.
1.30.030	Members' terms—Expiration—Vacancies.
1.30.040	Duties of commission.
1.30.050	Chairman—Adoption of rules.
1.30.060	Coordination of commission activities.

Personnel of commission exempt from state civil service law: RCW 41.06.083.

1.30.010 Legislative declaration. The legislature finds and declares that to secure the better administration of justice it is in the public interest to establish a law revision commission and thereby to: (1) Provide facilities and procedures to undertake the scholarly investigation of the law; (2) recommend to the legislature elimination of antiquated and inequitable rules of law and removal of other defects or anachronisms in the law; and (3) encourage the clarification and simplification of the law in Washington and to promote its better adaptation to modern conditions. [1982 c 183 § 1.]

1.30.020 Commission created—Membership. There is created the Washington law revision commission consisting of thirteen members as follows:

(1) Two senators, ex officio, to be designated by the president of the senate, and not members of the same political party;

(2) Two representatives, ex officio, to be designated by the speaker of the house of representatives, and not members of the same political party;

(3) Three deans of accredited law schools of this state, ex officio, or their designees from members of their respective law faculties;

(4) Four lawyers admitted to practice in this state, designated by the board of governors of the Washington state bar association;

(5) Two nonlawyer members with a demonstrated interest in the work of the commission, appointed by the governor. [1982 c 183 § 2.]

1.30.030 Members' terms—Expiration—Vacancies. The terms of the members designated by the state bar association and the governor shall be for four years. Of the initial members designated by the state bar association, the terms of two members shall expire June 30, 1984, and the terms of two members shall expire June 30, 1986. Of the initial members designated by the governor, the term of one member shall expire June 30, 1984, and the term of one member shall expire June 30, 1986. The terms of the legislative members of the commission shall be two years, from July 1 following the adjournment of the regular session of the legislature in each odd-numbered year starting in 1983 and to and including the thirtieth day of June in the succeeding odd-numbered year. The term of any member designated by a law school dean shall be at the pleasure of the dean.

The term of any ex officio member shall expire upon expiration of tenure of the position by virtue of which he or she is a member of the commission. Vacancies shall be filled in the same manner as for the member so vacating, and if a vacancy results other than from expiration of a term, the vacancy shall be filled for the unexpired term. [1982 c 183 § 3.]

1.30.040 Duties of commission. It shall be the duty of the law revision commission:

(1) To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law, surveying alternative remedies, and recommending needed reforms.

(2) To receive and consider proposed changes in the law recommended by the American law institute, the commissioners for the promotion of uniformity of legislation in the United States, any bar association, or other learned bodies.

(3) To receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(4) To recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the

law of this state, civil and criminal, into harmony with modern conditions.

(5) To recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the supreme court of the state or the supreme court of the United States.

(6) To promote utilization of sound principles of legal drafting to achieve clarity and precision in legal documents and in the statutory law and administrative rules and regulations. [1987 c 505 § 2; 1982 c 183 § 4.]

1.30.050 Chairman—Adoption of rules. The commission shall from time to time elect a chairman from among its members and adopt rules to govern its procedures. [1982 c 183 § 5.]

1.30.060 Coordination of commission activities. The commission shall confer and coordinate its activities with any committees of the legislature, the state bar association, the uniform law commission, the statute law committee, or the judicial council so as to most efficiently accomplish its functions. [1982 c 183 § 9.]

Judicial council: Chapter 2.52 RCW.

State bar association: Chapter 2.48 RCW.

Statute law committee: Chapter 1.08 RCW.

Uniform legislation commission: Chapter 43.56 RCW.

Chapter 1.40

STATE MEDAL OF MERIT

Sections

1.40.010	State medal of merit established.
1.40.020	Nominating committee created—Composition—Meeting—Rules.
1.40.030	Delegation of authority to make award.
1.40.040	Posthumous award.
1.40.050	Certain persons prohibited from receiving award.
1.40.060	Appearance of medal—Inscription.

1.40.010 State medal of merit established. There is established a decoration of the state medal of merit with accompanying ribbons and appurtenances for award by the governor, in the name of the state, to any person who has been distinguished by exceptionally meritorious conduct in performing outstanding services to the people and state of Washington, upon the nomination of the governor's state medal of merit committee. [1986 c 92 § 1.]

1.40.020 Nominating committee created—Composition—Meeting—Rules. There is created the state medal of merit committee for nominating candidates for the award of the state medal of merit. The committee membership consists of the governor, president of the senate, speaker of the house of representatives, and the chief justice of the supreme court, or their designees. The secretary of state shall serve as a nonvoting ex officio member, and shall serve as secretary to the committee. The committee shall meet annually to consider candidates for nomination. The committee shall adopt rules establishing the qualifications for the state medal of merit, the protocol governing the decoration,

and the appurtenances necessary to the implementation of this chapter. [1986 c 92 § 2.]

1.40.030 Delegation of authority to make award. The governor may delegate the awarding of the state medal of merit to the president of the senate, speaker of the house of representatives, or the chief justice of the supreme court. [1986 c 92 § 3.]

1.40.040 Posthumous award. The state medal of merit may be awarded posthumously to be presented to such representative of the deceased as may be deemed appropriate by the governor or the designees specified in RCW 1.40.030. [1986 c 92 § 4.]

1.40.050 Certain persons prohibited from receiving award. The state medal of merit shall not be awarded to any elected official while in office or to any candidate for an elected office. [1986 c 92 § 5.]

1.40.060 Appearance of medal—Inscription. The decoration of the state medal of merit shall be of bronze and shall consist of the seal of the state of Washington, surrounded by a raised laurel wreath and suspended from a ring attached by a dark green ribbon. The reverse of the decoration within the raised laurel wreath shall be inscribed with the words: "For exceptionally meritorious conduct in performing outstanding services to the people and state of Washington." [1986 c 92 § 6.]

Title 2

COURTS OF RECORD

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Chapter 2.04 SUPREME COURT

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2.04.010 Jurisdiction. The supreme court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or before the supreme court, or before any superior court of the state, or any judge thereof. [1890 p 322 § 6; RRS § 1.]

Rules of court: Cf. RAP 4.2, 4.3, 18.22; Titles 2 and 16 RAP.

Jurisdiction of supreme court: State Constitution Art. 4 § 4.

2.04.020 Court of record—General powers. The supreme court shall be a court of record, and shall be vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law, and the Constitution and laws of this state. [1890 p 323 § 10; RRS § 2.]

Courts of record: State Constitution Art. 4 § 11.

Judicial power, where vested: State Constitution Art. 4 § 1.

2.04.030 Supreme court and court of appeals—When open. The supreme court and the court of appeals shall always be open for the transaction of business except on Saturdays, Sundays, and legal holidays designated by the legislature. [1971 ex.s. c 107 § 1; 1909 p 36 § 7; RRS § 4. Prior: 1890 p 322 § 4, part.]

Rules of court: SAR—Rule 4.

"Legal holidays": RCW 1.16.050.

2.04.031 Court facilities. If proper rooms in which to hold the court, and for the accommodation of the officers thereof, are not provided by the state, together with attendants, furniture, fuel, lights, record books and stationery, suitable and sufficient for the transaction of business, the court, or any three justices thereof, may direct the clerk of the supreme court to provide the same; and the expense thereof, certified by any three justices to be correct, shall be paid out of the state treasury out of any funds therein not otherwise appropriated. Such moneys shall be subject to the order of the clerk of the supreme court, and be by him disbursed on proper vouchers, and accounted for by him in annual settlements with the governor. [1973 c 106 § 1; 1955 c 38 § 1; 1890 p 322 § 4; RRS § 3.]

2.04.040 Effect of adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. [1890 p 323 § 7; RRS § 5.]

Rules of court: SAR—Rule 5.

2.04.050 Style of process. Its process shall run in the name of the "State of Washington," bear test in the name of the chief justice, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to law, or such rule or orders as may be prescribed by the court. [1890 p 323 § 11; RRS § 6.]

Rules of court: SAR—Rule 2.

2.04.070 Number of judges. The supreme court, from and after February 26, 1909, shall consist of nine judges. [1909 c 24 § 1; RRS § 11036. FORMER PARTS OF SECTION: 1911 c 119 § 1; 1909 c 24 § 2; RRS § 11039; now codified in RCW 2.04.071. Prior: (i) 1905 c 5 § 1; 1890 p 321 § 1; RRS § 11035. (ii) 1893 c 5 § 1; RRS 11037. (iii) 1905 c 5 § 3; RRS § 11038.]

2.04.071 Election—Term of office. At the next general election, and at each biennial general election thereafter, there shall be elected three justices of the supreme court, to hold for the full term of six years, and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election. [1971 c 81 § 1; 1911 c 119 § 1; 1909 c 24 § 2; RRS § 11039. Formerly RCW 2.04.070, part.]

Election and terms, supreme court judges: State Constitution Art. 4 § 3.

Eligibility of judges: State Constitution Art. 4 § 17.

Forfeiture of office for absence: State Constitution Art. 4 § 8.

Impeachment: State Constitution Art. 5.

Judge may not practice law: State Constitution Art. 4 § 19.

Judges ineligible to other office: State Constitution Art. 4 § 15.

2.04.080 Oath of office. The several justices of the supreme court, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States and the Constitution of the State of

Washington, and that I will faithfully and impartially discharge the duties of the office of judge of the supreme court of the State of Washington to the best of my ability." Which oath or affirmation may be administered by any person authorized to administer oaths, a certificate whereof shall be affixed thereto by the person administering the oath. And the oath or affirmation so certified shall be filed in the office of the secretary of state. [1971 c 81 § 2; 1890 p 324 § 14; RRS § 11043.]

Oath of judges: State Constitution Art. 4 § 28.

2.04.092 Salary of justices. The annual salary of justices of the supreme court shall be established by the Washington citizens' commission on salaries for elected officials. No salary warrant may be issued to a justice of the supreme court until the justice files with the state treasurer an affidavit that no matter referred to the justice for opinion or decision has been uncompleted or undecided for more than six months. [1986 c 155 § 4; 1984 c 258 § 401.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010. Salaries of judicial officers: State Constitution Art. 4 §§ 13, 14; Art. 28 § 1; Art. 30 § 1.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

2.04.100 Vacancy, how filled. If a vacancy occurs in the office of a justice of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general election, and the justice so elected shall hold the office for the remainder of the unexpired term. [1971 c 81 § 3; 1955 c 38 § 2. Prior: 1937 c 15 § 1; 1893 c 5 § 2; 1890 p 321 § 3; RRS § 11044.]

2.04.110 Justices, judges to wear gowns. Each of the justices of the supreme court, judges of the court of appeals, and the judges of the superior courts shall in open court during the presentation of causes, before them, appear in and wear gowns, made of black silk, of the usual style of judicial gowns. [1971 c 81 § 4; 1909 c 206 § 1; RRS § 11054. Formerly RCW 2.04.110, 2.08.130.]

2.04.150 Apportionment of business—En banc hearings. The chief justice shall from time to time apportion the business to the departments, and may, in his discretion, before a decision is pronounced, order any cause pending before the court to be heard and determined by the court en banc. When a cause has been allotted to one of the departments and a decision pronounced therein, the chief justice, together with any two associate judges, may order such cause to be heard and decided by the court en banc. Any four judges may, either before or after decision by a department, order a cause to be heard en banc. [1909 c 24 § 4, part; RRS § 9.]

Rules of court: SAR 4.

2.04.160 Finality of departmental decision—Rehearings. The decision of a department, except in cases otherwise ordered as hereinafter provided, shall not become final until thirty days after the filing thereof, during which period a petition for rehearing, or for a hearing en banc, may be filed, the filing of either of which, except as hereinafter otherwise provided, shall have the effect of suspending such decision until the same shall have been disposed of. If no such petition be filed the decision of a department shall become final thirty days from the date of its filing, unless during such thirty-day period an order for a hearing en banc shall have been made: *Provided*, That if for any cause the chief justice or a majority of the department rendering any decision shall be of the opinion that such decision should go into effect prior to thirty days after its filing, it shall go into effect, and a judgment issue thereon, any time after its filing and prior to such thirty-day period, upon being in writing approved by the chief justice and any two associate judges who took no part in rendering such decision. The effect of granting a petition for a rehearing, or of ordering a cause once decided by department to be heard en banc, shall be to vacate and set aside the decision. Whenever a decision shall become final, as herein provided, a judgment shall issue thereon. [1909 c 24 § 4, part; RRS § 10.]

Rules of court: Cf. RAP 12.7, 18.22.

2.04.170 En banc hearings—Quorum—Finality of decision. The chief justice, or any four judges, may convene the court en banc at any time, and the chief justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision in the court en banc: *Provided*, That if five of the judges so present do not concur in a decision, then reargument shall be ordered and all the judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court en banc shall be final except in cases in which no previous decision has been rendered in one of the departments, and in such cases the decision of the court en banc shall become final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such period shall have the effect of suspending the decision until disposed of by the concurrence of five judges: *Provided*, That if for any cause five judges shall be of the opinion that such decision should go into effect prior to thirty days after its filing, it shall go into effect any time after its filing and prior to such thirty-day period upon being in writing approved by six judges of such court. Whenever a decision shall become final as herein provided, a judgment shall issue thereon. [1909 c 24 § 5; RRS § 11.]

Rules of court: Cf. RAP 12.7, 18.22.

2.04.180 Rules of practice and forms of process in supreme court. The supreme court may from time to

time institute such rules of practice and prescribe such forms of process to be used in such court and in the court en banc and each of its departments, and for the keeping of the dockets, records and proceedings, and for the regulation of such court, including the court en banc and in departments, as may be deemed most conducive to the due administration of justice. [1909 c 24 § 8; 1890 p 323 § 12; RRS § 13.]

Rules of court: Cf. Title 1 RAP and RAP 18.10.

2.04.190 Rules of pleading, practice, and procedure generally. The supreme court shall have the power to prescribe, from time to time, the forms of writs and all other process, the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving writs and process of all kinds; of taking and obtaining evidence; of drawing up, entering and enrolling orders and judgments; and generally to regulate and prescribe by rule the forms for and the kind and character of the entire pleading, practice and procedure to be used in all suits, actions, appeals and proceedings of whatever nature by the supreme court, superior courts, and district courts of the state. In prescribing such rules the supreme court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits. [1987 c 202 § 101; 1925 ex.s. c 118 § 1; RRS § 13-1.]

Rules of court: Cf. Title 1 RAP.

Intent—1987 c 202: "The legislature intends to:

- (1) Make the statutes of the state consistent with rules adopted by the supreme court governing district courts; and
- (2) Delete or modify archaic, outdated, and superseded language and nomenclature in statutes related to the district courts." [1987 c 202 § 1.]

Court of Appeals—Rules of administration and procedure: RCW 2.06.030.

2.04.200 Effect of rules upon statutes. When and as the rules of courts herein authorized shall be promulgated all laws in conflict therewith shall be and become of no further force or effect. [1925 ex.s. c 118 § 2; RRS § 13-2.]

Rules of court: Cf. CR 81(b), RAP 1.1(g).

2.04.210 Supplementary superior court rules. RCW 2.04.190 through 2.04.210 shall not be construed to deprive the superior courts of power to establish rules for their government supplementary to and not in conflict with the rules prescribed by the supreme court. [1925 ex.s. c 118 § 3; RRS § 13-3.]

Rules of court: Cf. CR 83(a); Cf. RAP 1.1.

Rules for government of superior courts: RCW 2.08.230, 2.16.040.

2.04.215 Adoption of rules for settlement conferences in civil cases. By January 1, 1982, the supreme court shall adopt rules for settlement conferences in civil cases in such superior courts and the court of appeals which are amenable to the settlement conference process. [1981 c 331 § 5.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Adoption of rules for discovery in civil cases in courts of limited jurisdiction: RCW 3.02.050.

2.04.220 Effect of supreme court judgments. The judgments and decrees of the supreme court shall be final and conclusive upon all the parties properly before the court. [1890 p 323 § 8; RRS § 14.]

Rules of court: SAR—Rule 3.

2.04.230 Report to governor. The judges of the supreme court shall, on or before the first day of January in each year, report in writing to the governor such defects and omissions in the laws as they may believe to exist. [1890 p 324 § 16; RRS § 11042.]

Annual report to governor: State Constitution Art. 4 § 25.

Court of Appeals—Reporting defects or omissions in the laws: RCW 2.06.110.

2.04.240 Judges pro tempore—Declaration of policy—Oath of office. (1) *Declaration of policy.* Whenever necessary for the prompt and orderly administration of justice, as authorized and empowered by Article IV, section 2(a), Amendment 38, of the state Constitution, a majority of the supreme court may appoint any regularly elected and qualified judge of the court of appeals or the superior court or any retired judge of a court of record in this state to serve as judge pro tempore of the supreme court.

(2) Before entering upon his duties as judge pro tempore of the supreme court, the appointee shall take and subscribe an oath of office as provided for in Article IV, section 28 of the state Constitution. [1982 c 72 § 1; 1963 c 40 § 1.]

Rules of court: SAR 21.

2.04.250 Judges pro tempore—Remuneration. (1) A judge of the court of appeals or of the superior court serving as a judge pro tempore of the supreme court as provided in RCW 2.04.240, as now or hereafter amended, shall receive, in addition to his regular salary, reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended.

(2) A retired judge of a court of record in this state serving as a judge pro tempore of the supreme court as provided in RCW 2.04.240 shall receive, in addition to any retirement pay he may be receiving, the following compensation and expenses:

(a) Reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended.

(b) During the period of his service as a judge pro tempore, an amount equal to the salary of a regularly elected judge of the court in which he last served for such period diminished by the amount of retirement pay accrued to him for such period.

(3) Whenever a superior court judge is appointed to serve as judge pro tempore of the supreme court and a visiting judge is assigned to replace him, subsistence, lodging, and travel expenses incurred by such visiting judge as a result of such assignment shall be paid in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended, upon application of such judge from the appropriation of the supreme court.

(4) The provisions of RCW 2.04.240 and 2.04.250 shall not be construed as impairing or enlarging any right or privilege acquired in any retirement or pension system by any judge or his dependents. [1982 c 72 § 2; 1981 c 186 § 1; 1963 c 40 § 2.]

Chapter 2.06

COURT OF APPEALS

Sections

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Commission to supervise publication of reports: RCW 2.32.160.

Commissioners of the court of appeals: Rules of court: CAR 16.

Court of Appeals reports: RCW 2.32.160, 40.04.030, 40.04.100 and 40.04.110.

Judicial council, membership on: RCW 2.52.010.

2.06.010 Court of appeals established—Definitions. There is hereby established a court of appeals as a court of record. For the purpose of RCW 2.06.010 through 2.06.100 the following terms shall have the following meanings:

- (1) "Rules" means rules of the supreme court.
- (2) "Chief justice" means chief justice of the supreme court.
- (3) "Court" means court of appeals.
- (4) "Judge" means judge of the court of appeals.
- (5) "Division" means a division of the court of appeals.
- (6) "District" means a geographic subdivision of a division from which judges of the court of appeals are elected.

(7) "General election" means the biennial election at which members of the house of representatives are elected. [1969 ex.s. c 221 § 1.]

2.06.020 Divisions—Locations—Judges enumerated—Districts. The court shall have three divisions, one of which shall be headquartered in Seattle, one of which shall be headquartered in Spokane, and one of which shall be headquartered in Tacoma:

(1) The first division shall have eight judges from three districts, as follows:

(a) District 1 shall consist of King county and shall have six judges;

(b) District 2 shall consist of Snohomish county and shall have one judge; and

(c) District 3 shall consist of Island, San Juan, Skagit and Whatcom counties and shall have one judge.

(2) The second division shall have four judges from the following districts:

(a) District 1 shall consist of Pierce county and shall have two judges;

(b) District 2 shall consist of Clallam, Grays Harbor, Jefferson, Kitsap, Mason, and Thurston counties and shall have one judge;

(c) District 3 shall consist of Clark, Cowlitz, Lewis, Pacific, Skamania, and Wahkiakum counties and shall have one judge.

(3) The third division shall have four judges from the following districts:

(a) District 1 shall consist of Ferry, Lincoln, Okanogan, Pend Oreille, Spokane and Stevens counties and shall have two judges;

(b) District 2 shall consist of Adams, Asotin, Benton, Columbia, Franklin, Garfield, Grant, Walla Walla, and Whitman counties and shall have one judge;

(c) District 3 shall consist of Chelan, Douglas, Kittitas, Klickitat and Yakima counties and shall have one judge. [1977 ex.s. c 49 § 1; 1969 ex.s. c 221 § 2.]

Rules of court: Cf. RAP 4.1(b).

Appointments to positions created by the amendment to this section by 1977 ex.s. c 49 § 1: RCW 2.06.075.

2.06.030 General powers and authority—Transfers of cases—Appellate jurisdiction, exceptions—Appeals. The administration and procedures of the court shall be as provided by rules of the supreme court. The court shall be vested with all power and authority, not inconsistent with said rules, necessary to carry into complete execution all of its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law and the Constitution and laws of this state.

For the prompt and orderly administration of justice, the supreme court may (1) transfer to the appropriate division of the court for decision a case or appeal pending before the supreme court; or (2) transfer to the supreme court for decision a case or appeal pending in a division of the court.

Subject to the provisions of this section, the court shall have exclusive appellate jurisdiction in all cases except:

(a) cases of quo warranto, prohibition, injunction or mandamus directed to state officials;

(b) criminal cases where the death penalty has been decreed;

(c) cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;

(d) cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination; and

(e) cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decisions of the supreme court;

all of which shall be appealed directly to the supreme court: *Provided*, That whenever a majority of the court before which an appeal is pending, but before a hearing thereon, is in doubt as to whether such appeal is within the categories set forth in subsection (d) or (e) of this section, the cause shall be certified to the supreme court for such determination.

The appellate jurisdiction of the court of appeals does not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars.

The court shall have appellate jurisdiction over review of final decisions of administrative agencies certified by the superior court pursuant to RCW 34.04.133.

Appeals from the court to the supreme court shall be only at the discretion of the supreme court upon the filing of a petition for review. No case, appeal or petition for a writ filed in the supreme court or the court shall be dismissed for the reason that it was not filed in the proper court, but it shall be transferred to the proper court. [1980 c 76 § 3; 1979 c 102 § 1; 1969 ex.s. c 221 § 3.]

Rules of court: Cf. Titles 1 and 4 RAP, RAP 18.22.

Severability—1979 c 102: See note following RCW 3.66.020.

2.06.040 Panels—Decisions, publication as opinions, when—Sessions—Rules. The court shall sit in panels of three judges and decisions shall be rendered by not less than a majority of the panel. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decisions shall be stated. All decisions of the court having precedential value shall be published as opinions of the court. Each panel shall determine whether a decision of the court has sufficient precedential value to be published as an opinion of the court. Decisions determined not to have precedential value shall not be published. Panels in the first division shall be comprised of such judges as the chief judge thereof shall from time to time direct. Judges of the respective divisions may sit in other divisions and causes may be transferred between divisions, as directed by written order of the chief justice. The court may hold sessions in cities as may be designated by rule.

No judge of the court shall be entitled to per diem or mileage for services performed at either his legal residence or the headquarters of the division of the court of which he is a member.

The court may establish rules supplementary to and not in conflict with rules of the supreme court. [1987 c 43 § 1; 1984 c 258 § 91; 1971 c 41 § 1; 1969 ex.s. c 221 § 4.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

2.06.045 When open for transaction of business. See RCW 2.04.030.

2.06.050 Qualifications of judges. A judge of the court shall be:

(1) Admitted to the practice of law in the courts of this state not less than five years prior to taking office.

(2) A resident for not less than one year at the time of appointment or initial election in the district for which his position was created. [1969 ex.s. c 221 § 5.]

2.06.062 Salary of judges. The annual salary of the judges of the court of appeals shall be established by the Washington citizens' commission on salaries for elected officials. No salary warrant may be issued to any judge until the judge files with the state treasurer an affidavit that no matter referred to the judge for opinion or decision has been uncompleted for more than six months. [1986 c 155 § 5; 1984 c 258 § 402.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

2.06.070 Original appointments—Election of judges—Terms of office. Upon the taking effect of RCW 2.06.010 through 2.06.100, the governor shall appoint the judges of the court of appeals for each district in the numbers provided in RCW 2.06.020, who shall hold office until the second Monday in January of the year following the first state general election following the effective date of this act. In making the original appointments the governor shall take into consideration such factors as: Personal character; intellect; ability; diversity of background of experience in the practice of the law; diversity of political philosophy; diversity of educational experience; and diversity of affiliation with social and economic groups, for the purpose of establishing a balanced appellate court with the highest quality of personnel. At the first state general election after the effective date of this act there shall be elected from each district the number of judges provided for in RCW 2.06.020. Upon taking office the judges of each division elected shall come together at the direction of the chief justice and be divided by lot into three equal groups; those of the first group shall hold office until the second Monday in January of 1973, those of the second group shall hold office until the second Monday in January of 1975, and those of the third group shall hold office until

the second Monday in January of 1977, and until their successors are elected and qualified. Thereafter, judges shall be elected for the full term of six years and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election: *Provided, however,* That if the governor shall make appointments to the appellate court from membership of the superior court, the governor shall, in making appointments filling vacancies created in the superior courts by such action, take into consideration such factors as: Personal character; intellect; ability; diversity of background of experience in the practice of the law; diversity of political philosophy; diversity of educational experience; and diversity of affiliation with social and economic groups, for the purpose of maintaining a balanced superior court with the highest quality of personnel. [1969 ex.s. c 221 § 7.]

Effective date—1969 ex.s. c 221: The effective date of this act [1969 ex.s. c 221] is May 8, 1969, see preface to 1969 session laws.

2.06.075 Appointments to positions created by 1977 ex.s. c 49 § 1—Election—Terms of office. The new judicial positions created pursuant to *section 1 of this 1977 amendatory act shall become effective January 1, 1978 and shall be filled by gubernatorial appointment as follows:

(1) Two shall be appointed to the first division, District 1, King county;

(2) One shall be appointed to the second division, District 1, Pierce county; and

(3) One shall be appointed to the third division, District 1, Ferry, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties.

The persons appointed by the governor shall hold office until the general election to be held in November 1978. Upon taking office the two newly appointed judges in Division 1 shall determine by lot the length of term they will be entitled to run for in the general election of 1977. One term will be for one year or until the second Monday in January 1980, and the other for three years or until the second Monday in January 1982, and until their successors are elected and qualified. Thereafter judges shall be elected for a term of six years and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election. At the general election to be held in November 1978, the judges appointed in Division 2 and Division 3 shall be entitled to run for a term of six years or until the second Monday in January 1985, and until their successors are elected and qualified. Thereafter judges shall be elected for a term of six years and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election. [1977 ex.s. c 49 § 3.]

***Reviser's note:** "section 1 of this 1977 amendatory act" consisted of an amendment to RCW 2.06.020 by 1977 ex.s. c 49 § 1.

2.06.080 Vacancies, how filled. If a vacancy occurs in the office of a judge of the court, the governor shall appoint a person to hold the office until the election and

qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election and the judge so elected shall hold the office for the remainder of the unexpired term. [1969 ex.s. c 221 § 8.]

2.06.085 Oath of judges. The several judges of the court of appeals, before entering upon the duties of their office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully and impartially discharge the duties of the office of judge of the court of appeals of the State of Washington to the best of my ability." Which oath or affirmation may be administered by any person authorized to administer oaths, a certificate whereof shall be affixed thereto by the person administering the oath. And the oath or affirmation so certified shall be filed in the office of the secretary of state. [1971 c 81 § 182.]

2.06.090 Practice of law, seeking nonjudicial elective office prohibited. No judge, while in office, shall engage in the practice of law. No judge shall run for elective office other than a judicial office during the term for which he was elected. [1969 ex.s. c 221 § 9.]

2.06.100 Retirement. Judges shall retire at the age, and under the conditions and with the same retirement benefits as specified by law for the retirement of justices of the supreme court. [1969 ex.s. c 221 § 10.]

2.06.110 Reporting defects or omissions in the laws. Court of appeals judges shall, on or before the first day of November in each year, report in writing to the justices of the supreme court, such defects and omissions in the laws as their experience may suggest. [1971 ex.s. c 107 § 6.]

2.06.150 Judges pro tempore—Appointment—Oath of office. (1) Whenever necessary for the prompt and orderly administration of justice, the chief justice of the supreme court of the state of Washington may appoint any regularly elected and qualified judge of the superior court or any retired judge of a court of record in this state to serve as judge pro tempore of the court of appeals: *Provided, however,* That no judge pro tempore appointed to serve on the court of appeals may serve more than ninety days in any one year.

(2) Before entering upon his duties as judge pro tempore of the court of appeals, the appointee shall take and subscribe an oath of office as provided for in Article IV, section 28 of the state Constitution. [1977 ex.s. c 49 § 2; 1973 c 114 § 1.]

2.06.160 Judges pro tempore—Remuneration. (1) A judge of a court of record serving as a judge pro tempore of the court of appeals, as provided in RCW 2.06.150, shall receive, in addition to his regular salary, reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state

officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended.

(2) A retired judge of a court of record in this state serving as a judge pro tempore of the court of appeals, as provided in RCW 2.06.150, shall receive, in addition to any retirement pay he may be receiving, the following compensation and expenses:

(a) Reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended; and

(b) During the period of his service as judge pro tempore, he shall receive as compensation sixty percent of one-two hundred and fiftieth of the annual salary of a court of appeals judge for each day of service: *Provided, however,* That the total amount of combined compensation received as salary and retirement by any judge in any calendar year shall not exceed the yearly salary of a full time judge.

(3) Whenever a judge of a court of record is appointed to serve as judge pro tempore of the court of appeals and a visiting judge is assigned to replace him, subsistence, lodging, and travel expenses incurred by such visiting judge as a result of such assignment shall be paid in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended, upon application of such judge from the appropriation of the court of appeals.

(4) The provisions of RCW 2.06.150 and 2.06.160 shall not be construed as impairing or enlarging any right or privilege acquired in any retirement or pension system by any judge or his dependents. [1981 c 186 § 2; 1973 c 114 § 2.]

**Chapter 2.08
SUPERIOR COURTS**

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Basic juvenile court act: Chapter 13.04 RCW.

Court commissioners: State Constitution Art. 4 § 23.

Family court: Chapter 26.12 RCW.

Judiciary and judicial power: State Constitution Art. 4.

2.08.010 Original jurisdiction. The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annulment of marriage, and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court, and shall have the power of naturalization and to issue papers therefor. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and nonjudicial days. [1955 c 38 § 3; 1890 p 342 § 5; RRS § 15.]

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 28).

2.08.020 Appellate jurisdiction. The superior courts shall have such appellate jurisdiction in cases arising in courts of limited jurisdiction in their respective counties as may be prescribed by law. [1987 c 202 § 102; 1890 p 343 § 6; RRS § 17.]

Rules of court: See *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)*.

Intent—1987 c 202: See note following RCW 2.04.190.

Appeals from
district courts: Criminal, chapter 10.10 RCW; civil, chapter 12.36 RCW.
municipal courts: Chapter 35.20 RCW.

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 28).

2.08.030 Courts of record—Sessions. The superior courts are courts of record, and shall be always open,

except on nonjudicial days. They shall hold their sessions at the county seats of the several counties, respectively, and at such other places within the county as are designated by the judge or judges thereof with the approval of the chief justice of the supreme court of this state and of the governing body of the county. They shall hold regular and special sessions in the several counties of this state at such times as may be prescribed by the judge or judges thereof. [1971 ex.s. c 60 § 1; 1890 p 343 § 7; RRS § 18.]

Rules of court: Cf. *CR 77(d), (f)*.

Courts of record: State Constitution Art. 4 § 11.

Open when: State Constitution Art. 4 § 6 (Amendment 28).

2.08.040 Effect of adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. [1890 p 343 § 8; RRS § 26.]

Rules of court: Cf. *CR 77(g)*.

2.08.050 Seal of courts. The seals of the superior courts of the several counties of the state shall be, until otherwise provided by law, the vignette of General George Washington, with the words "Seal of the Superior Court of _____ County, State of Washington," surrounding the vignette. [1890 p 345 § 17; RRS § 38.]

2.08.060 Judges—Election. There shall be in each of the counties a superior court. Judges of the superior court shall be elected at the general election in November, 1952, and every four years thereafter. [1951 c 125 § 2; 1949 c 237 §§ 1–5, part; 1945 c 20 § 1, part; 1933 ex.s. c 63 §§ 1–3, part; 1927 c 135 § 1, part; Rem. Supp. 1949 §§ 11045–1f–1i, part; Rem. Supp. 1945 §§ 11045–1d & 1e, part; RRS §§ 11045–1, 1a, 1b, 1c, part. Prior: 1925 ex.s. c 66 §§ 1–3, part; 1925 ex.s. c 132 §§ 1–4, part; 1917 c 97 §§ 1–5, part; 1913 c 17 §§ 1–4, part; 1911 c 40 §§ 1–3, part; 1911 c 62 §§ 1–3, part; 1911 c 76 §§ 1–3, part; 1911 c 129 §§ 1–3, part; 1911 c 131 §§ 1–2, part; 1909 c 10 §§ 1–3, part; 1909 c 12 §§ 1–3, part; 1909 c 52 §§ 1–3, part; 1909 c 94 §§ 1–3, part; 1907 c 79 §§ 1–3, part; 1907 c 106 § 1, part; 1907 c 178 §§ 1–2, part; 1905 c 9 §§ 1–3, part; 1905 c 36 §§ 1–4, part; 1903 c 50 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1–3, part; 1890 p 341 § 1, part.]

Election, terms, etc., superior judges: State Constitution Art. 4 § 5.

Eligibility of judges: State Constitution Art. 4 § 17.

Impeachment: State Constitution Art. 5.

Judges ineligible to other office: State Constitution Art. 4 § 15.

Judges may not practice law: State Constitution Art. 4 § 19.

Removal from office: State Constitution Art. 4 § 9.

2.08.061 Judges—King, Spokane, and Pierce counties. There shall be in the county of King no more than forty-six judges of the superior court; in the county of Spokane ten judges of the superior court; and in the county of Pierce fifteen judges of the superior court. [1987 c 323 § 1; 1985 c 357 § 1; 1980 c 183 § 1; 1979 ex.s. c 202 § 1; 1977 ex.s. c 311 § 1; 1973 1st ex.s. c 27 § 1; 1971 ex.s. c 83 § 5; 1969 ex.s. c 213 § 1; 1967 ex.s. c

84 § 1; 1963 c 48 § 1; 1961 c 67 § 1; 1955 c 176 § 1; 1951 c 125 § 3. Prior: 1949 c 237 §§ 1, 3; 1933 ex.s. c 63 § 1; 1927 c 135 § 1, part; 1925 ex.s. c 66 § 1; 1911 c 76 § 1; 1909 c 52 § 1; 1909 c 12 § 1; 1909 c 10 § 1; 1907 c 106 § 1; 1907 c 79 § 1, part; 1905 c 9 § 1; 1895 c 89 § 1, part; 1891 c 68 § 2; 1890 p 341 § 1, part; Rem. Supp. 1949 §§ 11045-1f, 11045-1h; RRS §§ 11045-1, 11045-1a, part.]

Effective dates—Additional judicial positions in King, Chelan, and Douglas counties subject to approval and agreement—1987 c 323: "Sections 1 and 2 of this act shall take effect January 1, 1988. The additional judicial positions created by sections 1 and 2 of this act in King county and Chelan and Douglas counties shall be effective only if each county through its duly constituted legislative authority documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities. The legislative authority of each county may in its discretion phase in any additional judicial positions over a period of time not to extend beyond January 1, 1990." [1987 c 323 § 5.] "Sections 1 and 2 of this act" are the amendments to RCW 2.08.061 and 2.08.062 by 1987 c 323.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1985 c 357: "(1) Sections 1 and 2 of this act shall take effect January 1, 1987. The additional judicial positions created by sections 1 and 2 of this act in Pierce and Clark counties shall be effective only if, prior to January 1, 1987, each county through its duly constituted legislative authority documents its approval of the additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities.

(2) Section 3 of this act shall take effect January 1, 1986. The additional judicial position created by section 3 of this act in Snohomish county shall be effective only if, prior to January 1, 1986, the county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [1985 c 357 § 4.] Sections 1, 2, and 3 of this act are the amendments to RCW 2.08.061, 2.08.062, and 2.08.064 by 1985 c 357.

Effective date—1977 ex.s. c 311: "This 1977 amendatory act shall take effect November 1, 1977." [1977 ex.s. c 311 § 6.] This applies to the amendments to RCW 2.08.061, 2.08.062, 2.08.064, and 2.08.065 by 1977 ex.s. c 311.

2.08.062 Judges—Chelan, Douglas, Clark, Grays Harbor, Kitsap, Kittitas, and Lewis counties. There shall be in the counties of Chelan and Douglas jointly, three judges of the superior court; in the county of Clark six judges of the superior court; in the county of Grays Harbor two judges of the superior court; in the county of Kitsap five judges of the superior court; in the county of Kittitas one judge of the superior court; in the county of Lewis two judges of the superior court. [1987 c 323 § 2; 1985 c 357 § 2; 1979 ex.s. c 202 § 2; 1977 ex.s. c 311 § 2; 1975-'76 2nd ex.s. c 79 § 1; 1971 ex.s. c 83 § 4; 1967 ex.s. c 84 § 2; 1963 c 48 § 2; 1951 c 125 § 4. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1911 c 131 § 1; 1907 c 79 § 1, part; 1907 c 178 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 § 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Effective dates—Additional judicial positions in King, Chelan, and Douglas counties subject to approval and agreement—1987 c 323: See note following RCW 2.08.061.

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1985 c 357: See note following RCW 2.08.061.

Adjustment in judicial services: See note following RCW 2.08.065.

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.063 Judges—Lincoln, Skagit, Walla Walla, Whitman, Yakima, Adams, and Whatcom counties. There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, two judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima five judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, three judges of the superior court. [1975 1st ex.s. c 49 § 1; 1973 1st ex.s. c 27 § 2; 1971 ex.s. c 83 § 1; 1963 c 48 § 3; 1955 c 19 § 1; 1951 c 125 § 5. Prior: 1949 c 237 §§ 2, 4; 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1917 c 97 § 5, part; 1911 c 62 § 1; 1911 c 129 § 2, part; 1907 c 79 § 1, part; 1895 c 89 § 1, part; 1891 c 68 § 3, part; 1890 p 341 § 1, part; Rem. Supp. 1949 §§ 11045-1j, 11045-1i; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

2.08.064 Judges—Benton, Franklin, Clallam, Jefferson, Snohomish, Asotin, Columbia, Garfield, Cowlitz, Klickitat, and Skamania counties. There shall be in the counties of Benton and Franklin jointly, five judges of the superior court; in the county of Clallam, two judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, nine judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, three judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court. [1985 c 357 § 3; 1982 c 139 § 2; 1981 c 65 § 1; 1979 ex.s. c 202 § 3; 1977 ex.s. c 311 § 3; 1974 ex.s. c 192 § 1; 1971 ex.s. c 83 § 3; 1969 ex.s. c 213 § 2; 1967 ex.s. c 84 § 3; 1963 c 35 § 1; 1961 c 67 § 2; 1955 c 19 § 2; 1951 c 125 § 6. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1925 ex.s. c 132 § 1; 1917 c 97 §§ 1-3; 1911 c 40 § 1; 1911 c 129 §§ 1, 2, part; 1907 c 79 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1, 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Effective dates—Additional judicial positions in Pierce, Clark, and Snohomish counties subject to approval and agreement—1985 c 357: See note following RCW 2.08.061.

Additional judicial positions in Clallam and Jefferson counties subject to approval and agreement—1982 c 139: "The additional judicial positions created by section 2 of this 1982 act in Clallam and Jefferson counties shall be effective only if, prior to April 1, 1982, each county through its duly constituted legislative authority documents its approval of the additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute." [1982 c 139 § 3.] Section 2 of this 1982 act is the amendment to RCW 2.08.064 by 1982 c 139.

Additional judicial positions in Ferry, Stevens, and Pend Oreille district subject to approval and agreement—1982 c 139; 1981 c 65: "The additional judicial position created by this 1981 act in the joint Ferry, Stevens, and Pend Oreille judicial district shall be effective only if each county in the judicial district through its duly constituted legislative authority documents its approval of the additional position and its agreement that it and the other counties comprising the judicial district will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial position as provided by statute. As among the counties, the amount of the judge's salary to be paid by each county shall be in accordance with RCW 2.08.110 unless otherwise agreed upon by the counties involved." [1982 c 139 § 1; 1981 c 65 § 3.]

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.065 Judges—Grant, Ferry, Okanogan, Mason, Thurston, Pacific, Wahkiakum, Pend Oreille, Stevens, San Juan and Island counties. There shall be in the county of Grant, two judges of the superior court; in the county of Okanogan, one judge of the superior court; in the county of Mason, one judge of the superior court; in the county of Thurston, five judges of the superior court; in the counties of Pacific and Wahkiakum jointly, one judge of the superior court; in the counties of Ferry, Pend Oreille, and Stevens jointly, two judges of the superior court; and in the counties of San Juan and Island jointly, two judges of the superior court. [1986 c 76 § 1; 1981 c 65 § 2; 1979 ex.s. c 202 § 4; 1977 ex.s. c 311 § 4; 1973 1st ex.s. c 27 § 3; 1971 ex.s. c 83 § 2; 1969 ex.s. c 213 § 3; 1955 c 159 § 1; 1951 c 125 § 7. Prior: 1927 c 135 § 1, part; 1917 c 97 §§ 4, 5, part; 1913 c 17 § 1; 1911 c 131 § 2; 1907 c 79 § 1, part; 1907 c 178 § 1, part; 1903 c 50 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1, 3, part; 1890 p 341 § 1, part; RRS § 11045-1, part.]

Effective date—Appointment of additional judicial position—1986 c 76: "(1) Pursuant to RCW 2.08.069, the governor shall appoint a person to fill the judicial position created by section 1 of this act in Mason county. The five judges of the superior court serving in the Thurston/Mason judicial district on January 1, 1987, shall be assigned to the new Thurston county judicial district.

(2) This act shall take effect January 1, 1987. The additional judicial position created by section 1 of this act in Mason county shall be effective only if, before January 1, 1987, Thurston and Mason counties, through their duly constituted legislative authorities, document their approval of the additional position and their agreement that they will pay out of county funds, without reimbursement from the state, the expenses resulting from section 1 of this act." [1986 c 76 § 2.] Section 1 of this act is the 1986 c 76 amendment to RCW 2.08.065.

Additional judicial positions subject to approval and agreement: See note following RCW 2.08.064.

Adjustment in judicial services provided for Douglas, Grant and Chelan counties: "The superior court judge serving in position two, as designated by the county auditors of Grant and Douglas counties for the 1976 general election, in the counties of Grant and Douglas prior to the effective date of this 1979 act, shall thereafter serve jointly in the counties of Douglas and Chelan, along with the judge previously serving only in Chelan county. The additional superior court judge position created by this 1979 act shall be for Grant county alone, which shall retain the judge in position one previously serving jointly in the counties of Grant and Douglas." [1979 ex.s. c 202 § 5.]

Effective date—1977 ex.s. c 311: See note following RCW 2.08.061.

2.08.069 Judges—Filling vacancies resulting from creation of additional judgeships. Unless otherwise provided, upon the taking effect of any act providing for

additional judges of the superior court and thereby creating a vacancy, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term. [1955 c 38 § 4; 1951 c 125 § 8.]

Vacancy, how filled: RCW 2.08.120.

2.08.070 Terms of office. The judges of the superior court elected under the provisions of RCW 2.08.060 through 2.08.065 shall hold their offices for the term of four years from and after the second Monday in January next succeeding their election, and until their successors are elected and qualified. [1927 c 135 § 2; RRS § 11045-2.]

Election, terms, etc., superior judges: State Constitution Art. 4 § 5.

Forfeiture of office for absence: State Constitution Art. 4 § 8.

Removal of judges: State Constitution Art. 4 § 9.

2.08.080 Oath of office. Every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the state of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state. Such oath or affirmation to be in form substantially the same as prescribed for justices of the supreme court. [1971 c 81 § 5; 1890 p 344 § 15; RRS § 11051.]

Oath of judges: State Constitution Art. 4 § 28.

2.08.092 Salary of judges. The annual salary of the judges of the superior court shall be established by the Washington citizens' commission on salaries for elected officials. [1986 c 155 § 6; 1984 c 258 § 403.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Salaries of judicial officers: State Constitution Art. 4 § 13, 14; Art. 28 § 1; Art. 30 § 1.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

2.08.100 Payment of county's portion—Limitation. The county auditor of each county shall draw his warrant on the treasurer of such county on the first Monday of each month for the amount of salary due for the previous month from such county to the judge of the superior court thereof, and said warrant shall be paid by said treasurer out of the salary fund of said county: *Provided*, That no such warrant shall be issued until the judge who is to receive the same shall have made an affidavit, in the manner provided by law, that no cause in his court remains pending and undecided contrary to the provisions of RCW 2.08.240 and of section 20, Article 4, Constitution of the state of Washington. [1939 c 189 § 1; 1893 c 30 § 1; 1890 p 329 § 2; RRS § 10967.]

Distribution of work of courts—Duty of judges to comply with chief justice's direction—Salary withheld: RCW 2.56.040.

2.08.110 Apportionment between counties in joint judicial district. Where there is only one judge of the superior court for two or more counties, the auditors thereof, acting together, shall apportion among or between such counties, according to the assessed valuation of their taxable property, the amount of such judge's salary that each county shall pay. [1890 p 329 § 3; RRS § 10968.]

2.08.115 Judges serving districts comprising more than one county—Reimbursement for travel expenses. Whenever a judge of the superior court shall serve a district comprising more than one county, such judge shall be reimbursed for travel expenses in connection with business of the court in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for travel from his residence to the other county or counties in his district and return. [1975-'76 2nd ex.s. c 34 § 1.]

Severability—1975-'76 2nd ex.s. c 34: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1976 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 34 § 182.]

Effective date—1975-'76 2nd ex.s. c 34: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1976." [1975-'76 2nd ex.s. c 34 § 183.]

2.08.120 Vacancy, how filled. If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term. [1955 c 38 § 5. Prior: 1890 p 342 § 4; 1937 c 15 § 2; RRS § 11049.]

Superior court—Election of judges, terms of, etc.: State Constitution Art. 4 § 5.

Vacancies resulting from additional judgeships: RCW 2.08.069.

2.08.140 Visiting judge at direction of governor. Whenever a judge of the superior court of any county in this state, or a majority of such judges in any county in which there is more than one judge of said court, shall request the governor of the state to direct a judge of the superior court of any other county to hold a session of the superior court of any such county as is first herein above mentioned, the governor shall thereupon request and direct a judge of the superior court of some other county, making such selection as the governor shall deem to be most consistent with the state of judicial business in other counties, to hold a session of the superior court in the county the judge shall have requested the governor as aforesaid. Such request and direction by the governor shall be made in writing, and shall specify the county in which he directs the superior judge to whom the same is addressed to hold such session of the superior court, and the period during which he is to hold

such session. Thereupon it shall be the duty of the superior judge so requested, and he is hereby empowered to hold a session of the superior court of the county specified by the governor, at the seat of judicial business thereof, during the period specified by the governor, and in such quarters as the county commissioners of said county may provide for the holding of such session. [1893 c 43 § 1; RRS § 27. Prior: 1890 p 343 § 10.]

Duty to hold court in other county or district: RCW 2.56.040.

2.08.150 Visiting judge at request of judge or judges. Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county to the superior judge of any other county, he is hereby empowered, if he deem it consistent with the state of judicial business in the county or counties whereof he is a superior judge (and in such case it shall be his duty to comply with such request), to hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners, and during such period as shall have been specified in the request, or such shorter period as he may deem necessary by the state of judicial business in the county or counties whereof he is a superior judge. [1893 c 43 § 2; RRS § 28. Prior: 1890 p 343 § 10.]

2.08.160 Sessions where more than one judge sits—Effect of decrees, orders, etc. In any county where there shall be more than one superior judge, or in which a superior judge of another county may be holding a session of the superior court, as provided in RCW 2.08.140 through 2.08.170, there may be as many sessions of the superior court at the same time as there are judges thereof, or assigned to duty therein by the governor, or responding to a request made as provided in RCW 2.08.150. In such cases the business of the court shall be so distributed and assigned by law, or in the absence of legislation therefor, by such rules and orders of the court as shall best promote and secure the convenient and expeditious transaction thereof. Judgments, decrees, orders and proceedings of any session of the superior court held by one or more of the judges of said court, or by any judge of the superior court of another county pursuant to the provisions of RCW 2.08.140 through 2.08.170, shall be equally effectual as if all the judges of such court presided at such session. [1893 c 43 § 3; RRS § 29. Prior: 1890 p 341 § 2.]

2.08.170 Expenses of visiting judge. Any judge of the superior court of any county in this state who shall hold a session of the superior court of any other county, in pursuance of the provisions of RCW 2.08.140 through 2.08.170 shall be entitled to receive from the county in which he shall hold such sessions reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended.

The county clerk of such county shall, upon the presentation to him by such judge of a statement of such expenses, verified by his affidavit, issue to such judge a certificate that he is entitled to the amount thereof; and upon presentation of such certificate to the auditor of such county he shall draw a warrant on the current expense fund of such county for the amount in favor of such judge. [1981 c 186 § 3; 1893 c 43 § 4; RRS § 30. Prior: 1890 p 329 § 4.]

Holding court in another county or district—Reimbursement for expenses: RCW 2.56.070.

2.08.180 Judges pro tempore—Appointment—Oath—Compensation. A case in the superior court of any county may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; and his action in the trial of such cause shall have the same effect as if he were a judge of such court. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.

A judge pro tempore shall, before entering upon his duties in any cause, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein _____ is plaintiff and _____ defendant, according to the best of my ability."

A judge pro tempore who is a practicing attorney and who is not a retired justice of the supreme court or judge of a superior court of the state of Washington, or who is not an active judge of an inferior court of the state of Washington, shall receive a compensation of one-two hundred and fiftieth of the annual salary of a superior court judge for each day engaged in said trial, to be paid in the same manner as the salary of the superior judge. A judge who is an active judge of an inferior court of the state of Washington shall receive no compensation as judge pro tempore. A justice or judge who has retired from the supreme court, court of appeals, or superior court of the state of Washington shall receive compensation as judge pro tempore in the amount of sixty percent of the amount payable to a judge pro tempore under this section. [1987 c 73 § 1; 1971 c 81 § 6; 1967 c 149 § 1; 1890 p 343 § 11; RRS § 40.]

Contingent effective date—1987 c 73: "This act shall take effect January 1, 1988, if the proposed amendment to Article IV, section 7 of the state Constitution, allowing retiring judges to hear pending cases, is validly submitted to and is approved and ratified by the voters at a general election held in November, 1987. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1987 c 73 § 2.]

Judges pro tempore: State Constitution Art. 4 § 7.

2.08.190 Powers of judge in counties of his district. Any judge of the superior court of the state of Washington shall have power, in any county within his district: (1) To sign all necessary orders and papers in probate matters pending in any other county in his district; (2) to issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his district; (3) to decide and rule upon all motions, demurrers, issues of fact or other matters that may have been submitted to him in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county: *Provided*, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties. [1901 c 57 § 1; RRS § 41.]

2.08.200 Decisions and rulings in matters heard outside judge's district. Any judge of the superior court of the state of Washington who shall have heard any cause, either upon motion, demurrer, issue of fact, or other matter in any county out of his district, may decide, rule upon, and determine the same in any county in this state, which decision, ruling and determination shall be in writing and shall be filed immediately with the clerk of the county where such cause is pending. [1901 c 57 § 2; RRS § 42.]

Rules of court: Statute modified or superseded by CR 7(c).

2.08.210 Extent of court's process—Venue. The process of the superior courts shall extend to all parts of the state: *Provided*, That all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon, real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions is situated. [1890 p 343 § 9; RRS § 32.]

Rules of court: Cf. CR 4(f).

Extent of process: State Constitution Art. 4 § 6 (Amendment 28).

Venue: Chapter 4.12 RCW.

2.08.220 Process, to whom directed. Unless otherwise provided by statute, all process issuing out of the court shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law. [1891 c 45 § 5; RRS § 35.]

2.08.230 Uniform rules to be established. The judges of the superior courts shall, from time to time, establish uniform rules for the government of the superior courts. [1890 p 344 § 13; RRS § 36.]

Rule making power, supreme court: RCW 2.04.180 through 2.04.210.

Superior court rules: State Constitution Art. 4 § 24.

Supplementary superior court rules: RCW 2.04.210.

Uniform court rules: RCW 2.16.040.

2.08.240 Limit of time for decision. Every case submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof: *Provided*, That if within said period

of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such rehearing, and upon wilful failure of any such judge so to do, he shall be deemed to have forfeited his office. [1890 p 344 § 12; RRS § 39.]

*Decisions, when to be made: State Constitution Art. 4 § 20.
Payment of county's portion—Limitation: RCW 2.08.100.*

2.08.250 Report to judges of supreme court. Superior judges shall, on or before the first day of November in each year, report in writing to the judges of the supreme court, such defects and omissions in the laws as their experience may suggest. [1890 p 344 § 14; RRS § 11050.]

Annual report to supreme court: State Constitution Art. 4 § 25.

**Chapter 2.10
JUDICIAL RETIREMENT SYSTEM**

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2.10.010 Short title. This chapter shall be known and cited as the Washington Judicial Retirement System Act. [1971 ex.s. c 267 § 1.]

2.10.020 Purpose. The purpose of this chapter is to effect a system of retirement from active service. [1971 ex.s. c 267 § 2.]

2.10.030 Definitions. (1) "Retirement system" means the "Washington judicial retirement system" provided herein.

(2) "Judge" means a person elected or appointed to serve as judge of a court of record as provided in chapters 2.04, 2.06, and 2.08 RCW. Said word shall not include a person serving as a judge pro tempore.

(3) "Retirement board" means the "Washington judicial retirement board" established herein.

(4) "Surviving spouse" means the surviving widow or widower of a judge. The word shall not include the divorced spouse of a judge.

(5) "Retirement fund" means the "Washington judicial retirement fund" established herein.

(6) "Beneficiary" means any person in receipt of a retirement allowance, disability allowance or any other benefit described herein.

(7) "Monthly salary" means the monthly salary of the position held by the judge.

(8) "Service" means all periods of time served as a judge, as herein defined. Any calendar month at the beginning or end of a term in which ten or more days are served shall be counted as a full month of service: *Provided*, That no more than one month's service may be granted for any one calendar month. Only months of service will be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Years of service shall be determined by dividing the total months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(9) "Final average salary" means (a) for a judge in service in the same court for a minimum of twelve consecutive months preceding the date of retirement, the salary attached to the position held by the judge immediately prior to retirement; (b) for any other judge, the average monthly salary paid over the highest twenty-four month period in the last ten years of service.

(10) "Retirement allowance" for the purpose of applying cost of living increases or decreases shall include retirement allowances, disability allowances and survivorship benefit.

(11) "Index" shall mean for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957–1959 equal one hundred) — compiled by the bureau of labor statistics, United States department of labor. [1971 ex.s. c 267 § 3.]

2.10.040 System created—Coverage—Exclusion from coverage. The Washington judicial retirement system is hereby created for judges appointed or elected under the provisions of chapters 2.04, 2.06, and 2.08 RCW. All judges first appointed or elected to the courts covered by these chapters on or after August 9, 1971 shall be members of this system: *Provided*, That following February 23, 1984, any newly elected or appointed judge holding credit toward retirement benefits under chapter 41.40 RCW shall be allowed thirty days from the effective date of election or appointment to such judgeship to make an irrevocable choice filed in writing with the department of retirement systems to continue coverage under that chapter and to be permanently excluded from coverage under this chapter for the current or any future term as a judge. [1984 c 37 § 1; 1971 ex.s. c 267 § 4.]

Transfers to system, prior service credit: RCW 2.10.220.

2.10.052 Retirement board abolished—Transfer of powers, duties, and functions. The Washington judicial retirement board established by this chapter is abolished. All powers, duties, and functions of the board are transferred to the director of retirement systems. [1982 c 163 § 1.]

Severability—1982 c 163: "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." [1982 c 163 § 24.]

Effective date—1982 c 163: "This act shall take effect June 30, 1982." [1982 c 163 § 25.]

2.10.070 Retirement board—Duties. The retirement board shall perform the following duties:

(1) Keep in convenient form such data as shall be deemed necessary for actuarial evaluation purposes;

(2) As of July 1 of every even-numbered year have an actuarial evaluation made as to the mortality and service experience of the beneficiaries under this chapter and the various accounts created for the purpose of showing the financial status of the retirement fund;

(3) Adopt for the retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Keep a record of its proceedings, which shall be open to inspection by the public;

(5) Serve without compensation but shall be reimbursed for expense incident to service as individual members thereof;

(6) From time to time adopt such rules and regulations not inconsistent with this chapter for the administration of this chapter and for the transaction of the business of the board.

No member of the board shall be liable for the negligence, default or failure of any employee or of any member of the board to perform the duties of his office and no member of the board shall be considered or held to be an insurer of the funds or assets of the retirement system, but shall be liable only for his own personal default or individual failure to perform his duties as such member and to exercise reasonable diligence in providing for safeguarding of the funds and assets of the system. [1971 ex.s. c 267 § 7.]

2.10.080 Funds and securities. (1) The state treasurer shall be the custodian of all funds and securities of the retirement system. Disbursements from this fund shall be made by the state treasurer upon receipt of duly authorized vouchers.

(2) The state treasurer is hereby authorized and directed to deposit any portion of the funds of the retirement system not needed for immediate use in the same manner and subject to all the provisions of law with respect to the deposit of state funds by such treasurer, and all interest earned by such portion of the retirement system's funds as may be deposited by the state treasurer in pursuance of authority herewith given shall be collected by him and placed to the credit of the retirement fund.

(3) The state investment board established by RCW 43.33A.020 has full power to invest or reinvest the funds

of this system in those classes of investments authorized by RCW 43.84.150.

(4) For the purpose of providing amounts to be used to defray the cost of administration, the judicial retirement board shall ascertain at the beginning of each biennium and request from the legislature an appropriation sufficient to cover estimated expenses for the said biennium. [1981 c 3 § 22; 1973 1st ex.s. c 103 § 1; 1971 ex.s. c 267 § 8.]

Intent of amendment—1981 c 3: "The amendment of RCW 2.10-.080, 2.12.070, 41.26.060, 41.26.070, and 41.40.080 by this 1980 act is intended solely to provide for the investment of state funds and is not intended to alter the administration of the affected retirement systems by the department of retirement systems under chapter 41.50 RCW." [1981 c 3 § 44.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1973 1st ex.s. c 103: "If any provision of this 1973 amendatory 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." [1973 1st ex.s. c 103 § 20.]

2.10.090 Funding of system. The total liability, as determined by the actuary, of this system shall be funded as follows:

(1) Every judge shall have deducted from his monthly salary an amount equal to seven and one-half percent of said salary.

(2) The state as employer shall contribute an equal amount on a quarterly basis.

(3) The state shall in addition guarantee the solvency of said fund and the legislature shall make biennial appropriations from the general fund of amounts sufficient to guarantee the making of retirement payments as herein provided for if the money in the judicial retirement fund shall become insufficient for that purpose, but such biennial appropriation may be conditioned that sums appropriated may not be expended unless the money in the judicial retirement fund shall become insufficient to meet the retirement payments. [1971 ex.s. c 267 § 9.]

Members' retirement contributions—Pick up by employer: RCW 41.04.445.

2.10.095 Payment of legal and medical expenses of system. The director of retirement systems is authorized to pay from the interest earnings of the trust funds of the system lawful obligations of the system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of

medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings. [1984 c 184 § 3.]

Severability—1984 c 184: See note following RCW 41.50.150.

2.10.100 Retirement for service or age. Retirement of a member for service shall be made by the retirement board as follows:

(1) Any judge who, on August 9, 1971 or within one year thereafter, shall have completed as a judge the years of actual service required under chapter 2.12 RCW and who shall elect to become a member of this system, shall in all respects be deemed qualified to retire under this retirement system upon his written request.

(2) Any member who has completed fifteen or more years of service and has attained the age of sixty years may be retired upon his written request.

(3) Any member who attains the age of seventy-five years shall be retired at the end of the calendar year in which he attains such age.

(4) Any judge who involuntarily leaves service at any time after having served an aggregate of twelve years shall be eligible to a partial retirement allowance computed according to RCW 2.10.110 and shall receive this allowance upon the attainment of the age of sixty years and fifteen years after the beginning of his judicial service. [1971 ex.s. c 267 § 10.]

2.10.110 Service retirement allowance. A member upon retirement for service shall receive a monthly retirement allowance computed according to his completed years of service, as follows: Ten years, but less than fifteen years, three percent of his final average salary for each year of service; fifteen years and over, three and one-half percent of his final average salary for each year of service: *Provided*, That in no case shall any retired member receive more than seventy-five percent of his final salary except as increased as a result of the cost of living increases as provided by this chapter. [1971 ex.s. c 267 § 11.]

2.10.120 Retirement for disability—Procedure. (1) Any judge who has served as a judge for a period of ten or more years, and who shall believe he has become physically or otherwise permanently incapacitated for the full and efficient performance of the duties of his office, may file with the retirement board an application in writing, asking for retirement. Upon receipt of such application the retirement board shall appoint one or more physicians of skill and repute, duly licensed to practice their professions in the state of Washington, who shall, within fifteen days thereafter, for such compensation as may be fixed by the board, to be paid out of the fund herein created, examine said judge and report in writing to the board their findings in the matter. If the physicians appointed by the board find the judge to be so disabled and the retirement board concurs in this finding the judge shall be retired.

(2) The retirement for disability of a judge, who has served as a judge for a period of ten or more years, by the supreme court under Article IV, section 31 of the

Constitution of the state of Washington (House Joint Resolution No. 37, approved by the voters November 4, 1980), with the concurrence of the retirement board, shall be considered a retirement under subsection (1) of this section. [1982 c 18 § 1; 1971 ex.s. c 267 § 12.]

Reviser's note: House Joint Resolution No. 37, approved by the voters November 4, 1980, became Amendment 71 to the Constitution of this state.

2.10.130 Retirement for disability allowance. Upon a judge being retired for disability as provided in RCW 2.10.120, he shall receive from the fund an amount equal to one-half of his final average salary. [1971 ex.s. c 267 § 13.]

2.10.140 Surviving spouse's benefit. A surviving spouse of any judge holding such office, or if he dies after having retired and who, at the time of his death, has served ten or more years in the aggregate, shall receive a monthly allowance equal to fifty percent of the retirement allowance the retired judge was receiving, or fifty percent of the retirement allowance the active judge would have received had he been retired on the date of his death, but in no event less than twenty-five percent of the final average salary that the deceased judge was receiving: *Provided*, That said surviving spouse had been married to the judge for a minimum of two years at time of death: *And provided further*, That if the surviving spouse remarries all benefits under this chapter shall cease. [1984 c 37 § 2; 1971 ex.s. c 267 § 14.]

Application—1984 c 37 § 2: "Section 2 of this 1984 act applies in respect to each surviving spouse who first applies for benefits under RCW 2.10.140 after January 1, 1984." [1984 c 37 § 3.]

2.10.150 Income of retired judge—Statement—Reduction. Every judge retired either for service or disability under the provisions of this chapter shall file a statement of income with the retirement board. Any retired judge who is receiving income from employment of any kind shall have his retirement allowance reduced by the amount that his combined retirement allowance and employment income exceed the current monthly salary being paid a judge of the same court in which the retired judge served immediately prior to his retirement: *Provided, however*, That pro tempore service as a judge of a court of record shall not constitute employment as that term is used in this section and income from pro tempore service need not be reported to the retirement board. Pro tempore service shall be limited to not more than ninety days in any single year, and the combined retirement allowance of a retired judge together with his income as a pro tempore judge shall not exceed the salary being paid a judge of the same court in which the retired judge served immediately prior to his retirement.

Failure to file or the filing of a false statement shall be grounds for cancellation of all benefits payable under this chapter. [1973 1st ex.s. c 119 § 1; 1971 ex.s. c 267 § 15.]

2.10.160 Earnings of surviving spouse—Statement—Reduction. Any surviving spouse who is receiving a monthly benefit under the provisions of this chapter and who is employed in any capacity shall file with the retirement board a statement of earnings. If said earnings are in excess of fifty percent of the monthly allowance being received the board shall reduce the allowance payable by the amount of said excess.

Failure to file or the filing of a false statement shall be grounds for cancellation of all benefits payable under this chapter. [1971 ex.s. c 267 § 16.]

2.10.170 Cost of living adjustments. Effective July 1, 1972, and of each succeeding year, every retirement allowance which has been in effect for one year or more shall be adjusted to that dollar amount which bears the ratio to its original dollar amount which the retirement board finds to exist between the index for the previous calendar year and the index for the calendar year prior to the date the retirement allowance became payable: *Provided*, That the amount of increase or decrease in any one year shall not exceed three percent of the then payable retirement allowance: *And provided further*, That this cost of living adjustment shall not reduce any pension below that amount which was payable at time of retirement. [1971 ex.s. c 267 § 17.]

2.10.180 Benefits exempt from taxation and judicial process—Exceptions—Deductions for group insurance premiums. (1) Except as provided in subsections (2), (3), and (4) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, or any other process of law whatsoever.

(2) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(3) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section.

(4) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, or (d) any administrative or court order expressly authorized by federal law. [1987 c 326 § 17; 1982 1st ex.s. c 52 § 1; 1979 ex.s. c 205 § 1; 1971 ex.s. c 267 § 18.]

Effective date—1987 c 326: See RCW 41.50.901.

Effective dates—1982 1st ex.s. c 52: See note following RCW 41.32.401.

2.10.190 Hearing prior to judicial review—Required—Notice. Any person aggrieved by any final decision of the retirement board must, before petitioning for judicial review, file with the director of the retirement system by mail or personally within sixty days from the day such decision was communicated to such person, a notice for a hearing before the retirement board. The notice of hearing shall set forth in full detail the grounds upon which such person considers such decision unjust or unlawful and shall include every issue to be considered by the retirement board, and it must contain a detailed statement of facts upon which such person relies in support thereof. Such persons shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those records of the retirement system. [1971 ex.s. 267 § 19.]

2.10.200 Hearing prior to judicial review—Conduct. A hearing shall be held by members of the retirement board, or its duly authorized representatives, in the county of the residence of the claimant at a time and place designated by the retirement board. Such hearings shall be de novo and shall conform to the provisions of chapter 34.04 RCW, as now or hereafter amended. The retirement board shall be entitled to appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the retirement board shall be governed by the provisions of chapter 34.04 RCW as now law or hereafter amended. [1971 ex.s. c 267 § 20.]

2.10.210 Hearing prior to judicial review—No bond required. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the retirement board affecting such claimant's right to retirement or disability benefits. [1971 ex.s. c 267 § 21.]

2.10.220 Transfers to system—Prior service credit. (1) Any member of the Washington public employees' retirement system who is eligible to participate in the judicial retirement system may, by written request filed with the retirement boards of the two systems respectively, transfer such membership to the judicial retirement system. Upon the receipt of such request, the board of the Washington public employees' retirement system shall transfer to the board of the Washington judicial retirement system (a) all employee's contributions and interest thereon belonging to such member in the employees' savings fund and all employer's contributions credited or attributed to such member in the benefit account fund and (b) a record of service credited to such member. One-half of such service shall be computed and not more than nine years shall be credited to such member as though such service was performed as a member of the judicial retirement system. Upon such transfer being made the state treasurer shall deposit such moneys in the judicial retirement fund. In the event

that any such member should terminate judicial service prior to his entitlement to retirement benefits under any of the provisions of this chapter, he shall upon request therefor be repaid from the judicial retirement fund an amount equal to the amount of his employee's contributions to the Washington public employees' retirement system and interest plus interest thereon from the date of the transfer of such moneys.

(2) Any member of the judicial retirement system who was formerly a member of the Washington public employees' retirement system with membership service credit of not less than six years but who has terminated his membership therein under the provisions of chapter 41.40 RCW, may reinstate his membership in the Washington public employees' retirement system, for the sole purpose of qualifying for a transfer of membership in the judicial retirement system in accordance with subsection (1) above by making full restoration of all withdrawn funds to the employees' savings fund prior to July 1, 1980. Upon reinstatement in accordance with this subsection, the provisions of subsection (1) and the provisions of RCW 41.40.120(3) shall then be applicable to the reinstated member in the same manner and to the same extent as they are to the present members of the Washington public employees' retirement system who are eligible to participate in the judicial retirement system.

(3) Any member of the judicial retirement system who has served as a judge for one or more years and who has rendered service for the state of Washington, or any political subdivision thereof, prior to October 1, 1947, or the time of the admission of the employer into the Washington public employees' retirement system, may—upon his payment into the judicial retirement fund of a sum equal to five percent of his compensation earned for such prior public service—request and shall be entitled to have one-half of such service computed and not more than six years immediately credited to such member as though such service had been performed as a member of the judicial retirement system, provided that any such prior service so credited shall not be claimed for any pension system other than a judicial retirement system. [1980 c 7 § 1; 1971 ex.s. c 267 § 22.]

Transfers to system by those covered under chapter 2.12 RCW: RCW 2.10.040.

Chapter 2.12

RETIREMENT OF JUDGES—RETIREMENT SYSTEM

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2.12.090	Benefits exempt from taxation and judicial process—Exceptions—Deductions for group insurance premiums.
2.12.100	Transfer of membership from Washington public employees' retirement system to judges' retirement system—Authorized—Procedure.
2.12.900	Construction—Gender.

Judicial retirement system—1971 act: Chapter 2.10 RCW.

Retirement of judges: State Constitution Art. 4 § 3(a) (Amendment 25).

2.12.010 Retirement for service or age. Any judge of the supreme court, court of appeals, or superior court of the state of Washington who heretofore and/or hereafter shall have served as a judge of any such courts for eighteen years in the aggregate or who shall have served ten years in the aggregate and shall have attained the age of seventy years or more may, during or at the expiration of his term of office, in accordance with the provisions of this chapter, be retired and receive the retirement pay herein provided for. In computing such term of service, there shall be counted the time spent by such judge in active service in the armed forces of the United States of America, under leave of absence from his judicial duties as provided for under chapter 201, Laws of 1941: *Provided, however,* That in computing such credit for such service in the armed forces of the United States of America no allowance shall be made for service beyond the date of the expiration of the term for which such judge was elected. Any judge desiring to retire under the provisions of this section shall file with the director of retirement systems, a notice in duplicate in writing, verified by his affidavit, fixing a date when he desires his retirement to commence, one copy of which the director shall forthwith file with the administrator for the courts. The notice shall state his name, the court or courts of which he has served as judge, the period of service thereon and the dates of such service. [1982 1st ex.s. c 52 § 2; 1973 c 106 § 4; 1971 c 30 § 1; 1943 c 221 § 1; 1937 c 229 § 1; Rem. Supp. 1943 § 11054-1.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 41.32.401.

Construction—1971 c 30: "The provisions of this 1971 amendatory act shall be construed in accordance with RCW 2.06.100 which provides for the retirement of judges of the court of appeals." [1971 c 30 § 7.]

Severability—1937 c 229: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional." [1937 c 229 § 10; RRS § 11054-10.] This applies to RCW 2.12.010, 2.12.020, 2.12.030 and 2.12.040 through 2.12.070.

2.12.012 Partial pension for less than eighteen years service—When authorized, amount. Any judge of the

supreme court, court of appeals, or superior court of this state who shall leave judicial service at any time after having served as a judge of any of such courts for an aggregate of twelve years shall be eligible to a partial retirement pension in a percentage of the pension provided in this chapter as determined by the proportion his years of judicial service bears to eighteen and shall receive the same upon attainment of age seventy, or eighteen years after the commencement of such judicial service, whichever shall occur first. [1971 c 30 § 2; 1961 c 286 § 1.]

Construction—1971 c 30: See note following RCW 2.12.010.

2.12.015 Additional pension for more than eighteen years service—**Amount.** In the event any judge of the supreme court, court of appeals, or superior court of the state serves more than eighteen years in the aggregate as computed under RCW 2.12.010, he shall receive in addition to any other pension benefits to which he may be entitled under this chapter, an additional pension benefit based upon one-eighteenth of his salary for each year of full service after eighteen years, provided his total pension shall not exceed seventy-five percent of the monthly salary he was receiving as a judge at the time of his retirement. [1971 c 30 § 3; 1961 c 286 § 2.]

Construction—1971 c 30: See note following RCW 2.12.010.

2.12.020 Retirement for disability. (1) Any judge of the supreme court, court of appeals, or superior court of the state of Washington, who heretofore and/or hereafter shall have served as a judge of any such courts for a period of ten years in the aggregate, and who shall believe he has become physically or otherwise permanently incapacitated for the full and efficient performance of the duties of his office, may file with the director of retirement systems an application in duplicate in writing, asking for retirement, which application shall be signed and verified by the affidavit of the applicant or by someone in his behalf and which shall set forth his name, the office then held, the court or courts of which he has served as judge, the period of service thereon, the dates of such service and the reasons why he believes himself to be, or why they believe him to be incapacitated. Upon filing of such application the director shall forthwith transmit a copy thereof to the governor who shall appoint three physicians of skill and repute, duly licensed to practice their professions in the state of Washington, who shall, within fifteen days thereafter, for such compensation as may be fixed by the governor, to be paid out of the fund hereinafter created, examine said judge and report, in writing, to the governor their findings in the matter. If a majority of such physicians shall report that in their opinion said judge has become permanently incapacitated for the full and efficient performance of the duties of his office, and if the governor shall approve such report, he shall file the report, with his approval endorsed thereon, in the office of the director and a duplicate copy thereof with the administrator for the courts, and from the date of such filing the applicant shall be deemed to have retired from office and

be entitled to the benefits of this chapter to the same extent as if he had retired under the provisions of RCW 2.12.010.

(2) The retirement for disability of a judge, who has served as a judge of the supreme court, court of appeals, or superior court of the state of Washington for a period of ten years in the aggregate, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (House Joint Resolution No. 37, approved by the voters November 4, 1980), with the concurrence of the retirement board, shall be considered a retirement under subsection (1) of this section. [1982 1st ex.s. c 52 § 3; 1982 c 18 § 2; 1973 c 106 § 5; 1971 c 30 § 4; 1937 c 229 § 2; RRS § 11054-2.]

Reviser's note: House Joint Resolution No. 37, approved by the voters November 4, 1980, became Amendment 71 to the Constitution of this state.

Effective dates—1982 1st ex.s. c 52: See note following RCW 41.32.401.

Construction—1971 c 30: See note following RCW 2.12.010.

2.12.030 Amount and time of payment—**Surviving spouse's benefit.** Supreme court, court of appeals, or superior court judges of the state who retire from office under the provisions of this chapter other than as provided in RCW 2.12.012 shall be entitled to receive monthly during the period of their natural life, out of the fund hereinafter created, an amount equal to one-half of the monthly salary they were receiving as a judge at the time of their retirement, or at the end of the term immediately prior to their retirement if their retirement is made after expiration of their term. The surviving spouse of any judge who shall have heretofore retired or may hereafter retire, or of a judge who was heretofore or may hereafter be eligible for retirement at the time of death, if the surviving spouse had been married to the judge for three years, if the surviving spouse had been married to the judge prior to retirement, shall be paid an amount equal to one-half of the retirement pay of the judge, as long as such surviving spouse remains unmarried. The retirement pay shall be paid monthly by the state treasurer on or before the tenth day of each month. The provisions of this section shall apply to the surviving spouse of any judge who dies while holding such office or dies after having retired under the provisions of this chapter and who at the time of death had served ten or more years in the aggregate as a judge of the supreme court, court of appeals, or superior court or any of such courts, or had served an aggregate of twelve years in the supreme court, court of appeals, or superior court if such pension rights are based upon RCW 2.12.012. [1973 1st ex.s. c 154 § 1; 1971 c 30 § 5; 1961 c 286 § 3; 1957 c 243 § 1; 1951 c 79 § 1; 1945 c 19 § 1; 1937 c 229 § 3; RRS § 11054-3.]

Severability—1973 1st ex.s. c 154: "If any provision of this 1973 amendatory 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." [1973 1st ex.s. c 154 § 130.]

Construction—1971 c 30: See note following RCW 2.12.010.

2.12.035 Retirement pay of certain justices or judges retiring prior to December 1, 1968—Widow's benefits.

The retirement pay or pension of any justice of the supreme or judge of any superior court of the state who was in office on August 6, 1965, and who retired prior to December 1, 1968, or who would have been eligible to retire at the time of death prior to December 1, 1968, shall be based, effective December 1, 1968, upon the annual salary which was being prescribed by the statute in effect for the office of justice of the supreme court or for the office of judge of the superior court, respectively, at the time of his retirement or at the end of the term immediately prior to his retirement if his retirement was made after expiration of his term or at the time of his death if he died prior to retirement. The widow's benefit for the widow of any such justice or judge as provided for in RCW 2.12.030 shall be based, effective December 1, 1968, upon such retirement pay. [1971 c 81 § 7; 1969 ex.s. c 202 § 1.]

2.12.037 Adjustment of pension of retired judges or widows. (1) "Index" for the purposes of this section, shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 equal one hundred) compiled by the Bureau of Labor Statistics, United States Department of Labor;

(2) Effective July 1, 1970, every pension computed and payable under the provisions of RCW 2.12.030 to any retired judge or to his widow which does not exceed four hundred fifty dollars per month shall be adjusted to that dollar amount which bears the ratio of its original dollar amount which is found to exist between the index for 1969 and the index for the calendar year prior to the effective retirement date of the person to whom, or on behalf of whom, such retirement allowance is being paid. [1970 ex.s. c 96 § 1.]

2.12.040 Service after retirement. If any retired judge shall accept an appointment or an election to a judicial office, he shall be entitled to receive the full salary pertaining thereto, and his retirement pay under this chapter shall be suspended during such term of office and his salary then received shall be subject to contribution to the judges' retirement fund as provided in this chapter. [1955 c 38 § 6; 1943 c 37 § 1; 1937 c 229 § 4; Rem. Supp. 1943 § 11054-4.]

2.12.045 Minimum monthly benefit—Post-retirement adjustment—Computation. (1) Notwithstanding any provision of law to the contrary, effective July 1, 1979, no person receiving a monthly benefit pursuant to this chapter shall receive a monthly benefit of less than ten dollars per month for each year of service creditable to the person whose service is the basis of the retirement allowance. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by ten dollars. Where the monthly benefit was adjusted at the time benefit payments to the beneficiary

commenced, the minimum benefit provided in this section shall be adjusted in a manner consistent with that adjustment.

(2) Notwithstanding any provision of law to the contrary, effective July 1, 1979, the monthly benefit of each person who either is receiving benefits pursuant to RCW 2.12.020 or 2.12.030 as of December 31, 1978, or commenced receiving a monthly benefit under this chapter as of a date no later than July 1, 1974, shall be permanently increased by a post-retirement adjustment. This adjustment shall be in lieu of any adjustments provided under RCW 2.12.037 as of July 1, 1979, or July 1, 1980, for the affected persons. Such adjustment shall be calculated as follows:

(a) Monthly benefits to which this subsection and subsection (1) of this section are both applicable shall be determined by first applying subsection (1) and then applying this subsection. The department shall determine the total years of creditable service and the total dollar benefit base accrued as of December 31, 1978, except that this determination shall take into account only those persons to whom this subsection applies;

(b) The department shall multiply the total benefits determined in (a) of this subsection by six percent and divide the dollar value thus determined by the total service determined in (a) of this subsection. The resultant figure shall then be a post-retirement increase factor which shall be applied as specified in (c) of this subsection;

(c) Each person to whom this subsection applies shall receive an increase which is the product of the factor determined in (b) of this subsection multiplied by the years of creditable service. [1979 ex.s. c 96 § 4.]

2.12.046 Monthly benefit—Post-retirement adjustment—Computation. Notwithstanding any provision of law to the contrary, effective July 1, 1983, the monthly benefit of each person who either is receiving benefits pursuant to RCW 2.12.020 or 2.12.030 as of December 31, 1982, or commenced receiving a monthly benefit under this chapter as of a date no later than July 1, 1978, shall be permanently increased by a post-retirement adjustment of \$.74 per month for each year of creditable service the judge established with the retirement system. Any fraction of a year of service shall be counted in the computation of the post-retirement adjustment. This adjustment shall be in lieu of any adjustments provided under RCW 2.12.037 as of July 1, 1983, or July 1, 1984, for the affected persons. [1983 1st ex.s. c 56 § 1.]

Effective date—1983 1st ex.s. c 56: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 1st ex.s. c 56 § 7.]

2.12.050 Judges' retirement fund—Created—Contents—Custodian—Records. There is hereby created a fund in the state treasury to be known as "The Judges' Retirement Fund" which shall consist of the moneys appropriated from the general fund in the state treasury, as hereinafter provided; the deductions from

salaries of judges, as hereinafter provided, all gifts, donations, bequests and devises made for the benefit of said fund, and the rents, issues and profits thereof, or proceeds of sales of assets thereof. The state treasurer shall be treasurer, ex officio, of this fund. The treasurer shall be custodian of the moneys in said judges' retirement fund. The department of retirement systems shall receive all moneys payable into said fund and make disbursements therefrom as provided in this chapter. The department shall keep written permanent records showing all receipts and disbursements of said fund. [1982 1st ex.s. c 52 § 4; 1977 c 75 § 1; 1977 c 18 § 1; 1967 c 28 § 1; 1959 c 192 § 1; 1937 c 229 § 5; RRS § 11054-5.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 41.32.401.

2.12.060 Fund, how constituted—Salary deductions—Aid. For the purpose of providing moneys in said judges' retirement fund, concurrent monthly deductions from judges' salaries and portions thereof payable from the state treasury and withdrawals from the general fund of the state treasury shall be made as follows: Six and one-half percent shall be deducted from the monthly salary of each justice of the supreme court, six and one-half percent shall be deducted from the monthly salary of each judge of the court of appeals, and six and one-half percent of the total salaries of each judge of the superior court shall be deducted from that portion of the salary of such justices or judges payable from the state treasury; and a sum equal to six and one-half percent of the combined salaries of the justices of the supreme court, the judges of the court of appeals, and the judges of the superior court shall be withdrawn from the general fund of the state treasury. In consideration of the contributions made by the judges and justices to the judges' retirement fund, the state hereby undertakes to guarantee the solvency of said fund and the legislature shall make biennial appropriations from the general fund of amounts sufficient to guarantee the making of retirement payments as herein provided for if the money in the judges' retirement fund shall become insufficient for that purpose, but such biennial appropriation may be conditioned that sums appropriated may not be expended unless the money in the judges' retirement fund shall become insufficient to meet the retirement payments. The deductions and withdrawals herein directed shall be made on or before the tenth day of each month and shall be based on the salaries of the next preceding calendar month. The administrator for the courts shall issue warrants payable to the treasurer to accomplish the deductions and withdrawals herein directed, and shall issue the monthly salary warrants of the judges and justices for the amount of salary payable from the state treasury after such deductions have been made. The treasurer shall cash the warrants made payable to him hereunder and place the proceeds thereof in the judges' retirement fund for disbursement as authorized in this chapter. [1973 c 106 § 6; 1973 c 37 § 1. Prior: 1971 c 81 § 8; 1971 c 30 § 6; 1957 c 243 § 2;

1951 c 79 § 2; 1945 c 19 § 2; 1937 c 229 § 6; Rem. Supp. 1945 § 11054-6.]

Construction—1971 c 30: See note following RCW 2.12.010.

Members' retirement contributions—Pick up by employer: RCW 41.04.445.

2.12.070 Investment of fund. Whenever the treasurer estimates that the balance of cash remaining in the judges' retirement fund, together with the estimated receipts for the remainder of the fiscal year, will exceed the estimated disbursements for the remainder of such year in the sum of one thousand dollars or more, he shall request the state investment board to invest such excess in such bonds as are by law authorized for the investment of the permanent school funds of the state. Whenever it appears to the treasurer that the cash remaining in the fund, together with the estimated receipts for the remainder of the fiscal year, will not meet the estimated disbursements as they shall fall due, he shall request the state investment board to sell so many of any bonds belonging to said fund as will produce cash sufficient for that purpose, and deposit the proceeds of such sale in the fund. [1981 c 3 § 23; 1955 c 221 § 1; 1937 c 229 § 8; RRS § 11054-8.]

Intent of amendment—1981 c 3: See note following RCW 2.10.080.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

2.12.080 Payment of legal and medical expenses of system. The director of retirement systems is authorized to pay from the interest earnings of the trust funds of the system lawful obligations of the system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings. [1984 c 184 § 4.]

Severability—1984 c 184: See note following RCW 41.50.150.

2.12.090 Benefits exempt from taxation and judicial process—Exceptions—Deductions for group insurance premiums. (1) Except as provided in subsections (2), (3), and (4) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions of this chapter and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or

other processes of law whatsoever and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, or (d) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington.

(4) Deductions made in the past from retirement benefits are hereby expressly recognized, ratified, and affirmed. Future deductions may only be made in accordance with this section. [1987 c 326 § 18; 1982 1st ex.s. c 52 § 32.]

Effective date—1987 c 326: See RCW 41.50.901.

Effective dates—1982 1st ex.s. c 52: See note following RCW 41.32.401.

2.12.100 Transfer of membership from Washington public employees' retirement system to judges' retirement system—Authorized—Procedure. Any member of the Washington public employees' retirement system who is eligible to participate in the judges' retirement system, may by written request filed with the director and custodian of the two systems respectively, transfer such membership to the judges' retirement system. Upon the receipt of such request, the director of the Washington public employees' retirement system shall transfer to the state treasurer (1) all employees' contributions and interest thereon belonging to such member in the employees' savings fund and all employers' contributions credited or attributed to such member in the benefit account fund and (2) a record of service credited to such member. One-half of such service but not in excess of twelve years shall be computed and credited to such member as though such service was performed as a member of the judges' retirement system. Upon such transfer being made the state treasurer shall deposit such moneys in the judges' retirement fund. In the event that any such member should terminate judicial service prior to his entitlement to retirement benefits under any of the provisions of chapter 2.12 RCW, he shall upon request therefor be repaid from the judges' retirement fund an amount equal to the amount of his employees' contributions to the Washington public employees' retirement system and interest plus interest thereon from the date of the transfer of such moneys: *Provided, however,* That this section shall not apply to any person who is retired as a judge as of February 20, 1970. [1970 ex.s. c 96 § 2.]

2.12.900 Construction—Gender. Whenever words importing the masculine gender are used in the provisions of this chapter they may be extended to females

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also as provided in RCW 1.12.050 and whenever words importing the feminine gender are used in the provisions of this chapter they may be extended to males. [1971 c 30 § 8.]

Chapter 2.16

ASSOCIATION OF SUPERIOR COURT JUDGES

Sections

2.16.010	Association created.
2.16.020	Officers.
2.16.040	Uniform court rules.
2.16.050	Annual meetings.
2.16.070	Effect of chapter on existing laws.

Court administrator: Chapter 2.56 RCW.

2.16.010 Association created. All the judges of the superior courts of the state of Washington are hereby associated under the name of the association of the superior court judges of the state of Washington. [1933 ex.s. c 58 § 1; RRS § 11051-1.]

2.16.020 Officers. The judges shall elect from their number a president, who shall be called president judge, and a secretary, who shall hold their offices from the date of one annual meeting of the association to the next. [1955 c 38 § 7; 1933 ex.s. c 58 § 2; RRS § 11051-2.]

2.16.040 Uniform court rules. At its annual meetings, pursuant to section 24, Article IV of the state Constitution, the association shall have power to establish uniform rules for the government of the superior courts, which rules may be amended from time to time. [1955 c 38 § 9; 1933 ex.s. c 58 § 4; RRS § 11051-4.]

Rules of court: *Cf. CR 83.*

Rule making power, supreme court: RCW 2.04.180 through 2.04.210.

Superior court rules: State Constitution Art. 4 § 24.

Uniform rules to be established: RCW 2.08.230.

2.16.050 Annual meetings. The association shall meet annually in July or August, at which meeting officers shall be chosen for the ensuing year and such other business transacted as may properly come before the association. [1955 c 38 § 10; 1933 ex.s. c 58 § 5; RRS § 11051-5.]

2.16.070 Effect of chapter on existing laws. Except for the provisions of *RCW 2.16.060, this chapter shall not be held to repeal any other existing law relating to the visitation of judges. [1933 ex.s. c 58 § 7; RRS § 11051-7.]

*Reviser's note: RCW 2.16.060 was repealed by 1973 c 106 § 40.

Chapter 2.20

MAGISTRATES

Sections

2.20.010	Magistrate defined.
2.20.020	Who are magistrates.

*Municipal judges as magistrates: RCW 35.20.020, 35.20.250.
Preliminary hearings: Chapter 10.16 RCW.*

2.20.010 Magistrate defined. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime. [1891 c 53 § 1; RRS § 50.]

2.20.020 Who are magistrates. The following persons are magistrates:

- (1) The justices of the supreme court.
- (2) The judges of the court of appeals.
- (3) The superior judges, and district judges.
- (4) All municipal officers authorized to exercise the powers and perform the duties of district judges. [1987 c 202 § 103; 1971 c 81 § 9; 1891 c 53 § 2; RRS § 51.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 2.24

COURT COMMISSIONERS AND REFEREES

Sections

2.24.010	Appointment of court commissioners—Qualifications—Term of office.
2.24.020	Oath.
2.24.030	Salary.
2.24.040	Powers of commissioners—Fees.
2.24.050	Revision by court.
2.24.060	Referees—Definition and powers.

*Court commissioners: State Constitution Art. 4 § 23.
Juvenile court, court commissioner powers: RCW 13.04.021.*

2.24.010 Appointment of court commissioners—Qualifications—Term of office. There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, one or more court commissioners for said county or judicial district. Each such commissioner shall be a citizen of the United States and an elector of the county or judicial district in which he may be appointed, and shall hold his office during the pleasure of the judges appointing him. [1979 ex.s. c 54 § 1; 1967 ex.s. c 87 § 1; 1961 c 42 § 1; 1909 c 124 § 1; RRS § 83. Prior: 1895 c 83 § 1.]

2.24.020 Oath. Court commissioners appointed hereunder shall, before entering upon the duties of such office, take and subscribe an oath to support the Constitution of the United States, the Constitution of the state of Washington, and to perform the duties of such office fairly and impartially and to the best of his ability. [1909 c 124 § 5; RRS § 88.]

2.24.030 Salary. Each court commissioner appointed hereunder shall be allowed a salary, in addition to the fees herein provided for, in such sum as the board of county commissioners may designate, said salary to be paid at the time and in the manner as the salary of other county officials. [1909 c 124 § 4; RRS § 87. Prior: 1895 c 83 § 3.]

2.24.040 Powers of commissioners—Fees. Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

- (1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.
- (2) To grant and enter defaults and enter judgment thereon.
- (3) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.
- (4) To act as referee in all matters and actions referred to him by the superior court as such, with all the powers now conferred upon referees by law.
- (5) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.

(6) To hear and determine all petitions for the adoption of children, for the dissolution of incorporations, and to change the name of any person.

(7) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: *Provided*, That in cases where a jury is demanded, same shall be referred to the superior court for trial.

(8) To hear and determine all complaints for the commitments of minors with all powers conferred upon the superior court in such matters.

(9) To hear and determine *ex parte* and uncontested civil matters of any nature.

(10) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of his lawful orders made in any matter before him as fully as the judge of the superior court.

(11) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.

(12) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.

(13) To charge and collect, for his own use, the same fees for the official performance of official acts mentioned in subsections (4) and (11) of this section as are provided by law for referees and notaries public. [1979 ex.s. c 54 § 2; 1963 c 188 § 1; 1909 c 124 § 2; RRS § 85. Prior: 1895 c 83 § 2.]

Powers of commissioner under juvenile court act: RCW 13.04.030.

2.24.050 Revision by court. All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon

the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, his orders and judgments shall be and become the orders and judgments of the superior court, and from same an appeal may be taken to the supreme court or the court of appeals in all cases where an appeal will lie from like orders and judgments entered by the judge. [1971 c 81 § 10; 1909 c 124 § 3; RRS § 86.]

2.24.060 Referees—Definition and powers. A referee is a person appointed by the court or judicial officer with power—

(1) To try an issue of law or of fact in a civil action or proceeding and report thereon.

(2) To ascertain any other fact in a civil action or proceeding when necessary for the information of the court, and report the fact or to take and report the evidence in an action.

(3) To execute an order, judgment or decree or to exercise any other power or perform any other duty expressly authorized by law. [1891 c 25 § 1; RRS § 82.]

Referee asking or receiving unlawful compensation: RCW 9A.68.020, 9A.68.030.

Supplemental proceedings: Chapter 6.32 RCW.

Trial before referee: Chapter 4.48 RCW.

Chapter 2.28

POWERS OF COURTS AND GENERAL PROVISIONS

Sections

2.28.010	Powers of courts in conduct of judicial proceedings.
2.28.020	Punishment for contempt.
2.28.030	Judicial officer defined—When disqualified.
2.28.040	May act as attorney, when.
2.28.050	Judge distinguished from court.
2.28.060	Powers of judicial officers.
2.28.070	Judicial officer may punish for contempt.
2.28.080	Powers of judges of supreme and superior courts.
2.28.090	Powers of inferior judicial officers.
2.28.100	No court on legal holidays—Exceptions.
2.28.110	Sitting deemed adjourned over legal holiday.
2.28.120	Proceedings may be adjourned from time to time.
2.28.130	Proceeding not to fail for want of judge or session of court.
2.28.139	County to furnish court house.
2.28.140	Court rooms.
2.28.141	County commissioners to provide temporary quarters.
2.28.150	Implied powers—Proceeding when mode not prescribed.
2.28.160	Judges pro tempore—Compensation—Reimbursement for subsistence, lodging and travel expenses—Affidavit to court.

Justice without unnecessary delay: State Constitution Art. 1 § 10.

2.28.010 Powers of courts in conduct of judicial proceedings. Every court of justice has power—(1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it or its officers. (4) To

compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties. [1955 c 38 § 12; 1909 c 124 § 2; RRS § 85.]

Compelling attendance of witnesses: Chapter 5.56 RCW.

Oaths, who may administer: RCW 5.28.010.

2.28.020 Punishment for contempt. For the effectual exercise of the powers specified in RCW 2.28.010, the court may punish for contempt in the cases and the manner provided by law. [1891 c 54 § 2; RRS § 53.]

Rules of court: CR 45(f).

Contempts: Chapter 7.20 RCW.

Criminal contempts: Chapter 9.23 RCW, RCW 9.92.040.

Power of judicial officer to punish for contempt: RCW 2.28.060, 2.28.070.

Witnesses, failure to attend as contempt: RCW 5.56.061 through 5.56.080.

2.28.030 Judicial officer defined—When disqualified. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

(1) In an action, suit or proceeding to which he is a party, or in which he is directly interested.

(2) When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.

(3) When he is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.

(4) When he has been attorney in the action, suit or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court.

In the cases specified in subdivisions (3) and (4), the disqualification may be waived by the parties, and except in the supreme court and the court of appeals shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law. [1971 c 81 § 11; 1895 c 39 § 1; 1891 c 54 § 3; RRS § 54.]

2.28.040 May act as attorney, when. A part-time district judge, if permitted by court rule, may act as an attorney in any court other than the one of which he or

she is judge, except in an action, suit or proceeding removed therefrom to another court for review. [1987 c 202 § 104; 1891 c 54 § 4; RRS § 55. Cf. Code 1881 § 3293.]

Intent—1987 c 202: See note following RCW 2.04.190.
Judge may not practice law: State Constitution Art. 4 § 19.

2.28.050 Judge distinguished from court. A judge may exercise out of court all the powers expressly conferred upon a judge as contradistinguished from a court and not otherwise. [1891 c 54 § 5; RRS § 56.]

2.28.060 Powers of judicial officers. Every judicial officer has power—(1) To preserve and enforce order in his immediate presence and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law. (2) To compel obedience to his lawful orders as provided by law. (3) To compel the attendance of persons to testify in a proceeding pending before him, in the cases and manner provided by law. (4) To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and the performance of his duties. [1955 c 38 § 13; 1891 c 54 § 6; RRS § 57.]

Compelling attendance of witnesses: Chapter 5.56 RCW.
Oaths, who may administer: RCW 5.28.010.

2.28.070 Judicial officer may punish for contempt. For the effectual exercise of the powers specified in RCW 2.28.060, a judicial officer may punish for contempt in the cases and manner provided by law. [1891 c 54 § 7; RRS § 58.]

Rules of court: CR 45(f).
Contempts: Chapter 7.20 RCW.
Criminal contempts: Chapter 9.23 RCW, RCW 9.92.040.
Power of court to punish for contempt: RCW 2.28.020.
Witnesses, failure to attend as contempt: RCW 5.56.061 through 5.56.080.

2.28.080 Powers of judges of supreme and superior courts. The judges of the supreme and superior courts have power in any part of the state to take and certify—

(1) The proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged.

(2) The acknowledgment of satisfaction of a judgment in any court.

(3) An affidavit or deposition to be used in any court of justice or other tribunal of this state.

(4) To exercise any other power and perform any other duty conferred or imposed upon them by statute. [1891 c 54 § 8; RRS § 59.]

Who may take acknowledgments: RCW 64.08.010.

2.28.090 Powers of inferior judicial officers. Every other judicial officer may, within the county, city, district or precinct in which he is chosen—

(1) Exercise the powers mentioned in RCW 2.28.080(1), (2) and (3).

(2) Exercise any other power and perform any other duty conferred or imposed upon him by other statute. [1891 c 54 § 9; RRS § 60.]

2.28.100 No court on legal holidays—Exceptions. No court shall be open, nor shall any judicial business be transacted, on a legal holiday, except:

(1) To give, upon their request, instructions to a jury when deliberating on their verdict;

(2) To receive the verdict of a jury;

(3) For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature;

(4) For hearing applications for and issuing writs of habeas corpus, injunction, prohibition and attachment;

(5) For the issuance of any process or subpoena not requiring immediate judicial or court action, and the service thereof.

The governor, in declaring any legal holiday, in his discretion, may provide in his proclamation that such holiday shall not be applicable to the courts of or within the state. [1986 c 219 § 1; 1933 c 54 § 1; 1927 c 51 § 2; RRS § 64. Prior: 1891 c 41 § 2; Code 1881 § 1267.]

Courts to be open except on nonjudicial days: State Constitution Art. 4 § 6 (Amendment 28).

Legal holidays: RCW 1.16.050.

2.28.110 Sitting deemed adjourned over legal holiday. If any legal holiday happens to be a day appointed for the sitting of a court or to which it is adjourned, such sitting shall be deemed appointed for or adjourned to the next day which is not a legal holiday. [1927 c 51 § 3; RRS § 65. Prior: 1891 c 41 § 3.]

2.28.120 Proceedings may be adjourned from time to time. A court or judicial officer has power to adjourn any proceeding before it or him from time to time, as may be necessary, unless otherwise expressly provided by law. [1891 c 54 § 10; RRS § 66.]

2.28.130 Proceeding not to fail for want of judge or session of court. No proceeding in a court of justice in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges, or by the failure of a session of the court. [1891 c 49 § 2; RRS § 67.]

Rules of court: Section superseded by CR 6(c). See comment by court after CR 6(c).

2.28.139 County to furnish court house. The county in which the court is held shall furnish the court house, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the court house and court which are not paid by the United States. [Code 1881 § 2111; 1869 p 421 § 10; 1863 p 425 § 11; RRS § 4034.]

2.28.140 Court rooms. If the proper authority neglects to provide any superior court with rooms, furniture, fuel, lights and stationery suitable and sufficient for the transaction of its business and for the jury attending upon it, if there be one, the court may order the sheriff

to do so, at the place within the county designated by law for holding such court; and the expense incurred by the sheriff in carrying such order into effect, when ascertained and ordered to be paid by the court, is a charge upon the county. [1955 c 38 § 14; 1891 c 54 § 11; RRS § 68.]

2.28.141 County commissioners to provide temporary quarters. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county. [Code 1881 § 2688; 1854 p 423 § 23; RRS § 4035.]

2.28.150 Implied powers—Proceeding when mode not prescribed. When jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws. [1955 c 38 § 15; 1891 c 54 § 12; RRS § 69.]

2.28.160 Judges pro tempore—Compensation—Reimbursement for subsistence, lodging and travel expenses—Affidavit to court. Whenever a judge serves as a judge pro tempore the payments for subsistence, lodging, and compensation pursuant to RCW 2.04.250 and 2.06.160 as now or hereafter amended shall be paid only for time actually spent away from the usual residence and abode of such pro tempore judge and only for time actually devoted to sitting on cases heard by such pro tempore judge and for time actually spent in research and preparation of a written opinion prepared and delivered by such pro tempore judge; which time spent shall be evidenced by an affidavit of such judge to be submitted by him to the court from which he is entitled to receive subsistence, lodging, and compensation for his services pursuant to RCW 2.04.250 and 2.06.160 as now or hereafter amended. [1975-'76 2nd ex.s. c 34 § 2.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Chapter 2.32

COURT CLERKS, REPORTERS, AND BAILIFFS

Sections

- 2.32.011 Election, compensation—Clerks of superior court.
- 2.32.021 Oath and bond of clerk of superior court.
- 2.32.031 Office—Clerks of superior court.
- 2.32.050 Powers and duties of court clerks.
- 2.32.060 Powers and duties of clerk of superior court.
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- 2.32.280 To act as amanuensis in certain counties.
- 2.32.290 Court files accessible to reporter.
- 2.32.300 Office space.
- 2.32.310 Other reporting service not precluded.
- 2.32.330 Criers and bailiffs.
- 2.32.360 Compensation of superior court bailiffs.
- 2.32.370 Payment of compensation.

2.32.011 Election, compensation—Clerks of superior court. See chapters 36.16 and 36.17 RCW.

2.32.021 Oath and bond of clerk of superior court. See RCW 36.16.040 through 36.16.060.

2.32.031 Office—Clerks of superior court. See RCW 36.23.080.

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

- (1) To keep the seal of the court and affix it in all cases where he is required by law.
- (2) To record the proceedings of the court.
- (3) To keep the records, files and other books and papers appertaining to the court.
- (4) To file all papers delivered to him for that purpose in any action or proceeding in the court as directed by court rule or statute.
- (5) To attend the court of which he is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court.
- (6) To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments and decrees.
- (7) To authenticate by certificate or transcript, as may be required, the records, files or proceedings of the court, or any other paper appertaining thereto and filed with him.
- (8) To exercise the powers and perform the duties conferred and imposed upon him elsewhere by statute.
- (9) In the performance of his duties to conform to the direction of the court.
- (10) To publish notice of the procedures for inspection of the public records of the court. [1981 c 277 § 1; 1971

c 81 § 12; 1891 c 57 § 3; RRS § 77. Prior: Code 1881 §§ 2180, 2182, 2184.]

Rules of court: SAR 16.

2.32.060 Powers and duties of clerk of superior court. See chapter 36.23 RCW.

County clerk is clerk of superior court: State Constitution Art. 4 § 26. County clerk's trust fund and safekeeping thereof: Chapter 36.48 RCW.

2.32.070 Fees—Supreme court clerk, clerks of court of appeals. The clerk of the supreme court and the clerks of the court of appeals shall collect the following fees for their official services:

Upon filing his first paper or record and making an appearance, the appellant or petitioner shall pay to the clerk of said court a docket fee of one hundred twenty-five dollars.

For copies of opinions, twenty cents per folio: *Provided*, That counsel of record and criminal defendants shall be supplied a copy without charge.

For certificates showing admission of an attorney to practice law five dollars, except that there shall be no fee for an original certificate to be issued at the time of his admission.

For filing a petition for review of a court of appeals decision terminating review, one hundred dollars.

The foregoing fees shall be all the fees connected with the appeal or special proceeding.

No fees shall be required to be advanced by the state or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation. [1987 c 382 § 1; 1981 c 331 § 2; 1971 ex.s. c 107 § 2; 1951 c 51 § 1; 1907 c 56 § 1, part; 1903 c 151 § 1, part; RRS § 497, part. Prior: 1893 c 130 § 1, part; Code 1881 § 2086, part; 1866 pp 94–99, part; 1863 pp 391–399, part; 1861 pp 34–42, part; 1854 pp 368–376, part.]

Court Congestion Reduction Act of 1981—Purpose—1981 c 331: "Recognizing the value of providing the people of the state of Washington with justice delivered in an expeditious fashion, recognizing the need to assure the people of the state of Washington that the quality of our judicial system will not be placed in jeopardy, and recognizing the need to avoid congestion of the courts at all levels of our judicial system, the legislature hereby enacts this Court Congestion Reduction Act of 1981." [1981 c 331 § 1.]

Severability—1981 c 331: "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." [1981 c 331 § 16.]

"Folio" defined: RCW 1.16.040.

2.32.071 Fees—Superior court clerks. See RCW 36.18.020.

County law library fees: RCW 27.24.070, 27.24.090.

2.32.075 Fees—Stenographer, court reporter costs. The clerk of the superior court shall pay into the county treasury from each fee collected for the filing of each new civil case in his office, including appeals, the sum of four dollars, which shall be known as stenographer or court reporter costs. [1961 c 304 § 5.]

2.32.090 Clerk not to practice law. Each clerk of a court is prohibited during his continuance in office from acting, or having a partner who acts, as an attorney of the court of which he is clerk. [1891 c 57 § 5; RRS § 81. Prior: Code 1881 § 2183; 1854 p 367 § 10.]

Rules of court: SAR 16(3).

2.32.110 Specification of reporter's duties. He shall prepare such decisions for publication by giving the title of each case, a syllabus of the points decided, a brief statement of the facts bearing on the points decided, the names of the counsel, and a reference to such authorities as are cited from standard reports and textbooks that have a special bearing on the case, and he shall prepare a full and comprehensive index to each volume, and prefix a table of cases reported. [1890 p 320 § 2; RRS § 11059.]

Rules of court: SAR 17(5).

2.32.120 Publication of reports. The reports must be published under the supervision of the court, and to that end each of the judges must be furnished by the reporter with proof sheets of each volume thirty days before its final publication. [1890 p 320 § 3; RRS § 11060.]

Rules of court: SAR 17(6).

Publication of supreme court

opinions: State Constitution Art. 4 § 21.

reports by public printer: RCW 43.78.070.

2.32.130 Correction by judges. Within thirty days after such proof sheets are furnished, the judges must return the same to the reporter, with corrections or alterations, and he must make the corrections or alterations accordingly. [1890 p 320 § 4; RRS § 11061.]

Rules of court: SAR 17(6).

2.32.140 Opinions available to reporter. The reporter may take the original opinions and papers in each case from the clerk's office and retain them in his possession not exceeding sixty days. [1890 p 320 § 5; RRS § 11062.]

2.32.160 Commission to supervise publication of reports. There is hereby created a commission to supervise the publication of the decisions of the supreme court and court of appeals of this state in both the form of advance sheets for temporary use and in permanent form, to be known as the commission on supreme court reports, and to consist of six members, as follows: The chief justice of the supreme court, who shall be chairman of the commission, the reporter of decisions of the supreme court, the state law librarian, a judge of the court of appeals designated by the chief judges, the public printer, and a representative of the Washington state bar who shall be appointed by the president thereof. Members of the commission shall serve as such without additional or any compensation: *Provided*, That members shall be compensated in accordance with RCW 43.03.240. [1984 c 287 § 7; 1971 c 42 § 1; 1943 c 185 § 1; Rem. Supp. 1943 § 11071–1. Prior: 1917 c 87 § 1; 1905 c 167 §§ 1–4; 1895 c 55 § 1; 1891 c 37 § 1; 1890 p 327 § 1.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

2.32.170 Powers of commission. The commission is authorized and directed, from time to time: To determine all matters whatsoever, pertaining to the publication (which is defined as including printing, binding, sale and distribution) of such decisions, in both such temporary and permanent forms, including the making of all specifications for material, workmanship, binding, size, number of pages, contents, and arrangement thereof, frequency of publication, and all other matters, whether similar to the foregoing or not, that relate to such publication: *Provided*, That the specifications shall require that the type to be used shall not be smaller than eleven point on a thirteen point slug; to establish a uniform price at which such decisions, in temporary and permanent form, either separately or together, shall be sold to any purchaser, public or private, including the state, its departments, subdivisions, institutions, and agencies; to establish said price at the amount which is, as nearly as may be, equal to the cost of such publication and the expenses incidental thereto, which price, if it is deemed necessary and proper by the commission in the light of substantially changed costs and expenses, may be adjusted annually, and in no event oftener than semiannually; to enter, in the name of the commission, into any and all contracts with any persons, firms, and corporations, deemed by the commission necessary and proper to carry into effect the foregoing powers, with authority to include all such terms and conditions as the commission in its discretion shall deem fit; to modify or terminate, with the consent of the other party thereto, any contract existing on June 9, 1943 for the publication of such decisions. [1943 c 185 § 2; Rem. Supp. 1943 § 11071-2. Prior: 1921 c 162 § 1; 1919 c 117 §§ 1-3; 1905 c 167 § 5.]

2.32.180 Superior court reporters—Qualifications—Appointment—Terms—Oath and bonds. It shall be and is the duty of each and every superior court judge in counties or judicial districts in the state of Washington having a population of over thirty-five thousand inhabitants to appoint, or said judge may, in any county or judicial district having a population of over twenty-five thousand and less than thirty-five thousand, appoint a stenographic reporter to be attached to the court holden by him who shall have had at least three years' experience as a skilled, practical reporter, or who upon examination shall be able to report and transcribe accurately one hundred and seventy-five words per minute of the judge's charge or two hundred words per minute of testimony each for five consecutive minutes; said test of proficiency, in event of inability to meet qualifications as to length of time of experience, to be given by an examining committee composed of one judge of the superior court and two official reporters of the superior court of the state of Washington, appointed by

the president judge of the superior court judges association of the state of Washington: *Provided*, That a stenographic reporter shall not be required to be appointed for the seven additional judges of the superior court authorized for appointment by section 1, chapter 323, Laws of 1987. The initial judicial appointee shall serve for a period of six years; the two initial reporter appointees shall serve for a period of four years and two years, respectively, from September 1, 1957; thereafter on expiration of the first terms of service, each newly appointed member of said examining committee to serve for a period of six years. In the event of death or inability of a member to serve, the president judge shall appoint a reporter or judge, as the case may be, to serve for the balance of the unexpired term of the member whose inability to serve caused such vacancy. The examining committee shall grant certificates to qualified applicants. Administrative and procedural rules and regulations shall be promulgated by said examining committee, subject to approval by the said president judge.

The stenographic reporter upon appointment shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or judicial district for which he is appointed: *Provided*, That in no event shall there be appointed more official reporters in any one county or judicial district than there are superior court judges in such county or judicial district; the appointments in each class AA county shall be made by the majority vote of the judges in said county acting en banc; the appointments in class A counties and counties of the first class may be made by each individual judge therein or by the judges in said county acting en banc. Each official reporter so appointed shall hold office during the term of office of the judge or judges appointing him, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his duties shall take an oath to perform faithfully the duties of his office, and file a bond in the sum of two thousand dollars for the faithful discharge of his duties. Such reporter in each court is hereby declared to be a necessary part of the judicial system of the state of Washington. [1987 c 323 § 4; 1957 c 244 § 1; 1945 c 154 § 1; 1943 c 69 § 1; 1921 c 42 § 1; 1913 c 126 § 1; Rem. Supp. 1945 § 42-1. Formerly RCW 2.32.180, 2.32.190.]

2.32.200 Duties of official reporter. It shall be the duty of each official reporter appointed under RCW 2.32.180 through 2.32.310 to attend every term of the superior court in the county or judicial district for which he is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any court, if either party to the suit or action, or his attorney, request the services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his services with

respect to any portion of the proceedings therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had. [1983 c 3 § 1; 1913 c 126 § 2; RRS § 42-2.]

2.32.210 Salaries—Expenses. Each official reporter shall be paid such compensation as shall be fixed, after recommendation by the judges of the judicial district involved, by the legislative authority of the county comprising said judicial district, or by the legislative authorities acting jointly where the judicial district is comprised of more than one county: *Provided*, That in judicial districts having a total population of forty thousand or more, the salary of an official court reporter shall not be less than sixteen thousand five hundred dollars per annum: *Provided further*, That in judicial districts having a total population of twenty-five thousand and under forty thousand, such salary shall not be less than eleven thousand one hundred dollars per annum.

Said compensation shall be paid out of the current expense fund of the county or counties where court is held.

In judicial districts comprising more than one county the council or commissioners thereof shall, on the first day of January of each year, or as soon thereafter as may be convenient, apportion the amount of the salary to be paid to the reporter by each county according and in proportion to the number of criminal and civil actions entered and commenced in superior court of the constituent counties in the preceding year. In addition to the salary above provided, in judicial districts comprising more than one county, the reporter shall receive his actual and necessary expenses of transportation and living expenses when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expense to be paid by the county to which he travels. If one trip includes two or more counties, the expense may be apportioned between the counties visited in proportion to the amount of time spent in each county on the trip. If an official reporter uses his own automobile for the purpose of such transportation, he shall be paid therefor at the same rate per mile as county officials are paid for use of their private automobiles. The sworn statement of the official reporter, when certified as correct by the judge presiding, shall be a sufficient voucher upon which the county auditor shall draw his warrant upon the treasurer of the county in favor of the official reporter.

The salaries of official court reporters shall be paid upon sworn statements, when certified as correct by the judge presiding, as state and county officers are paid. [1975 1st ex.s. c 128 § 1; 1972 ex.s. c 18 § 1; 1969 c 95 § 1; 1967 c 20 § 1; 1965 ex.s. c 114 § 1; 1961 c 121 § 1; 1957 c 244 § 2; 1953 c 265 § 1; 1951 c 210 § 1. Prior: 1945 c 24 § 1; 1943 c 69 § 2; 1913 c 126 § 3; Rem. Supp. 1945 § 42-3.]

2.32.220 Application to lesser judicial districts. If the judge of the superior court in any judicial district having

a total population of less than twenty-five thousand finds that the work in such district requires the services of an official court reporter he may appoint a person qualified under RCW 2.32.180. [1957 c 244 § 3; 1951 c 210 § 2; 1945 c 24 § 2; Rem. Supp. 1945 § 42-3a.]

2.32.230 One reporter for two lesser districts. An official court reporter may be appointed to serve two or more judicial districts, each of which has a total population under twenty-five thousand, if the judges thereof so agree, and the salary of such official reporter shall be determined by the total population of all the judicial districts so served in accordance with the schedule of salaries in RCW 2.32.210, and shall be apportioned between the several counties of the districts as therein provided. Such reporter, if appointed, must be qualified to serve, under RCW 2.32.180. [1951 c 210 § 3; 1945 c 24 § 3; Rem. Supp. 1945 § 42-3b.]

2.32.240 Transcript of testimony—Fee—Forma pauperis. (1) When a record has been taken in any cause as provided in RCW 2.32.180 through 2.32.310, if the court, or either party to the suit or action, or his attorney, request a transcript, the official reporter and clerk of the court shall make, or cause to be made, with reasonable diligence, full and accurate transcript of the testimony and other proceedings, which shall, when certified to as hereinafter provided, be filed with the clerk of the court where such trial is had for the use of the court or parties to the action. The fees of the reporter and clerk of the court for making such transcript shall be fixed in accordance with costs as allowed in cost bills in civil cases by the supreme court of the state of Washington, and when such transcript is ordered by any party to any suit or action, said fee shall be paid forthwith by the party ordering the same, and in all cases where a transcript is made as provided for under the provisions of RCW 2.32.180 through 2.32.310 the cost thereof shall be taxable as costs in the case, and shall be so taxed as other costs in the case are taxed: *Provided*, That when, from and after December 20, 1973, a party has been judicially determined to have a constitutional right to a transcript and to be unable by reason of poverty to pay for such transcript, the court may order said transcript to be made by the official reporter, which transcript fee therefor shall be paid by the state upon submission of appropriate vouchers to the clerk of the supreme court. [1983 c 3 § 2; 1975 1st ex.s. c 261 § 1; 1972 ex.s. c 111 § 1; 1970 ex.s. c 31 § 1; 1965 c 133 § 3; 1957 c 244 § 4; 1943 c 69 § 4; 1913 c 126 § 5; Rem. Supp. 1943 § 42-5.]

Severability—1965 c 133: "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." [1965 c 133 § 4.]

Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals: RCW 4.88.330.

2.32.250 Transcript accorded verity. The report of the official reporter, when transcribed and certified as being a correct transcript of the stenographic notes of

the testimony, or other oral proceedings had in the matter, shall be prima facie a correct statement of such testimony or other oral proceedings had, and the same may thereafter, in any civil cause, be read in evidence as competent testimony, when satisfactory proof is offered to the judge presiding that the witness originally giving such testimony is then dead or without the jurisdiction of the court, subject, however, to all objections the same as though such witness were present and giving such testimony in person. [1913 c 126 § 6; RRS § 42-6.]

2.32.260 Notes of outgoing reporter may be transcribed—Effect. When the official reporter who has taken notes in any cause, shall thereafter cease to be such official reporter, any transcript thereafter made by him therefrom, or made by any competent person under the direction of the court, and duly certified to by the person making the same, under oath, as a full, true and correct transcript of said notes, the same shall have full force and effect the same as though certified by an official reporter of said court. [1913 c 126 § 7; RRS § 42-7.]

2.32.270 Reporter pro tempore. In the event of the absence or inability of the official reporter to act, the presiding judge may appoint a competent stenographer to act pro tempore, who shall perform the same duties as the official reporter, and whose report when certified to, shall have the same legal effect as the certified report of the official reporter. The reporter pro tempore shall possess the qualifications and take the oath prescribed for the official reporter, and shall file a like bond, and shall receive the same compensation. [1913 c 126 § 8; RRS § 42-8.]

2.32.280 To act as amanuensis in certain counties. In all counties or judicial districts, except in class AA counties and class A counties and counties of the first class, such official reporter shall act as amanuensis to the court for which he is appointed. [1957 c 244 § 5; 1943 c 69 § 5; 1913 c 126 § 9; Rem. Supp. 1943 § 42-9.]

2.32.290 Court files accessible to reporter. Official reporters or reporters pro tempore may, without order of court, upon giving a proper receipt therefor, procure at all reasonable hours from the office of the clerk of the court, any files or exhibits necessary for use in the preparation of statements of fact or transcribing portions of testimony or proceedings in any cause reported by them. [1913 c 126 § 10; RRS § 42-10.]

2.32.300 Office space. Suitable office space shall be furnished the official reporter. [1943 c 69 § 6; 1913 c 126 § 11; Rem. Supp. 1943 § 42-11.]

2.32.310 Other reporting service not precluded. Nothing in this act or any other act or parts of acts or court rule shall be construed to preclude such official reporter from performing other and additional reporting service at any time when such service can be performed without conflict with or prejudice to the duties of the

official reporter. [1943 c 69 § 8; Rem. Supp. 1943 § 42-14.]

2.32.330 Criers and bailiffs. Every court of record shall have the power to appoint a crier and as many bailiffs as may be necessary for the orderly and expeditious dispatch of the business. [1891 c 54 § 13; RRS § 11052.]

2.32.360 Compensation of superior court bailiffs. Bailiffs of the several superior courts in this state, appointed by the respective judges thereof, shall be paid for their services such salary or per diem as shall be fixed and allowed by the board of county commissioners of the county in which they serve. [1949 c 139 § 1; 1945 c 149 § 1; 1943 c 94 § 1; 1939 c 134 § 1; 1917 c 94 § 1; 1891 c 10 § 1; Rem. Supp. 1949 § 10973. Cf. 1921 c 25 § 1; 1919 c 141 § 1.]

2.32.370 Payment of compensation. From time to time, the superior judge of the county shall certify the amount due any such bailiff, and order the payment thereof; and thereupon the county auditor shall issue to such bailiff a warrant on the county treasurer, payable out of the general fund [current expense fund], for the amount so certified. [1891 c 10 § 2; RRS § 10975.]

**Chapter 2.36
JURIES**

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Juries

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Jury trial

*civil cases, challenging, procedure, etc.: Chapter 4.44 RCW.
criminal cases: Chapter 10.49 RCW.*

2.36.010 Jury defined. A jury is a body of men temporarily selected from the qualified inhabitants of a particular district, and invested with power—

- (1) To present or indict a person for a public offense.

(2) To try a question of fact. [1891 c 48 § 1; RRS § 89.]

2.36.020 Kinds of juries. There shall be three kinds of juries—

- (1) A grand jury.
- (2) A petit jury.
- (3) A jury of inquest. [1891 c 48 § 2; RRS § 90.]

2.36.050 Petit jury defined. A petit jury is a body of persons twelve or less in number in the superior court and six in number in courts of limited jurisdiction; drawn in the superior court and in courts of limited jurisdiction by lot from the jurors in attendance upon the court at a particular session, and sworn to try and determine a question of fact. In courts of limited jurisdiction, juries shall be selected and impaneled in the same manner as in the superior courts, except that a court of limited jurisdiction shall use the jury list developed by the superior court judge or judges to select a jury panel. [1980 c 162 § 6; 1972 ex.s. c 57 § 1; 1891 c 48 § 4; RRS § 92.]

Severability—1980 c 162: See note following RCW 3.02.010. *Courts of limited jurisdiction: Chapter 3.02 RCW.*

2.36.060 Petit jury, how drawn—Jury list—Procedure. The judge or judges of the superior court of each county shall divide the county into not less than three jury districts, following the lines of voting precincts and arranging the districts in such manner that the population in each district shall be as nearly equal as may be, and the fixing of the boundaries of the district shall be evidenced by an order made by the court and entered upon its records.

The county auditor shall prepare annually from the original registration files of voters of the county a list according to a procedure or formula established by the judge or judges of the superior court for the selection of prospective jurors from the original registration files of voters. The list shall be divided into the respective voting precincts and shall specify with respect to each name appearing on said list all the information upon the original registration card of each qualified voter.

During the month of July of each year, the judge or judges of the superior court for each county shall select by lot, in the manner hereinafter set forth, from said lists and from the original registration files of voters of the county, and enter in a book kept for that purpose and shall certify and file with the county clerk a jury list containing the names of a sufficient number of qualified persons to serve as jurors until the first day of August of the next calendar year. The judge or judges may call (but are not required to call) one or more electors from each or any of the jury districts to advise in the selection. Each such elector shall receive for his services the sum of ten dollars per day and the mileage allowed sheriffs, upon vouchers approved by the judge or presiding judge of the county. In making the selection of jurors the judge or judges shall be bound by the list of names filed with the county clerk as in this section provided. At any time and from time to time the judges may add to

the jury list in the same manner, and when this is done a certified list of the names added shall be filed with the clerk.

The number of persons selected from the several jury districts shall be as nearly as possible in proportion to the number of names on the list certified and filed with the county clerk for the several districts.

The county clerk shall provide boxes sufficient in number to correspond with the number of jury districts fixed by the court, and numbered to correspond therewith, and having written the names appearing in the jury list for each district upon slips of paper, which shall be similar in size, quality of paper, and writing, shall deposit such slips in the jury box of the proper district. At the time of the drawing of names for any venire there must be in the jury boxes at least five times as many names as the number of names to be drawn.

The jury list shall be selected by the judge or judges in the following manner:

- (1) The selection of precincts from which names are to be selected shall be by lot;
- (2) The number of jurors selected from each precinct selected under subsection (1) shall, insofar as practicable, be equal;
- (3) The selection of prospective jurors within a given precinct shall be by selection of names in a given and identical numbered sequence based upon the number of jurors to be selected therefrom. [1979 ex.s. c 135 § 1; 1967 c 92 § 1; 1961 c 287 § 1; 1943 c 238 § 1; 1925 ex.s. c 191 § 1; 1921 c 26 § 1; 1911 c 57 § 3; Rem. Supp. 1943 § 96.]

Severability—1979 ex.s. c 135: "If any provision of this amendatory 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." [1979 ex.s. c 135 § 12.]

2.36.063 Jury list—Electronic data processing random selection method—Master jury list. The judge or judges of the superior court of any county may, if they so choose, by local superior court rule, employ a properly programmed electronic data processing system or device to make random selection of jurors as required by RCW 2.36.060.

Upon determination that such system shall be employed, the judge or judges of the superior court shall direct the county auditor to provide the names and other information concerning all registered voters which have been filed with him by the registrar of voters pursuant to RCW 2.36.060.

In those counties employing the electronic data processing random selection method, the judge or judges of the superior court may determine that fair and random selection may be achieved without division of the county into three or more jury districts. Upon such determination, the judge or judges shall, during the month of July each year, order a master jury list to be selected by an unrestricted random sample from the names of all registered voters filed with the county auditor, without regard to location of precinct.

In those counties employing the electronic data processing random selection method, if the judge or judges

of the superior court determine that the jury district procedure required for noncomputer jury selection is to be followed, the judge or judges shall divide the county into not less than three jury districts pursuant to RCW 2.36.060. The judge or judges shall during the month of July each year, order a master jury list to be selected by an unrestricted random sample from the names of all registered voters filed with the county auditor. Such list must contain as nearly as possible an equal number of jurors from each jury district.

The master jury list randomly selected shall contain names of a sufficient number of qualified voters to serve as jurors until the first day of August of the next calendar year, and shall be certified and filed with the county clerk. At any time the judge or judges may add to the jury list in the random selection manner by data process device as approved by the judge or judges. A certified list of the added names shall be filed with the county clerk. [1973 2nd ex.s. c 13 § 1.]

2.36.070 Qualification of jurors. No person shall be competent to serve as a juror in the superior courts of the state of Washington unless he be

- (1) an elector and taxpayer of the state,
- (2) a resident of the county in which he is called for service for more than one year preceding such time,
- (3) in full possession of his faculties and of sound mind: *Provided*, That a person shall not be precluded from the list of prospective jurors because of loss of sight in any degree. Sound mind, as used in this section, shall mean the necessary mental process utilized in reasoning to a logical conclusion, and

(4) able to read and write the English language. [1975 1st ex.s. c 203 § 1; 1971 ex.s. c 292 § 3; 1911 c 57 § 1; RRS § 94. Prior: 1909 c 73 § 1.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

2.36.080 State policy for selection of jurors—Exclusion for race, color, religion, sex, national origin, or economic status prohibited. (1) It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with *this 1979 act to be considered for jury service in this state and have an obligation to serve as jurors when summoned for that purpose.

(2) A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.

(3) This section does not affect the right to peremptory challenges under RCW 4.44.130. [1979 ex.s. c 135 § 2; 1967 c 39 § 1; 1911 c 57 § 2; RRS § 95. Prior: 1909 c 73 § 2.]

***Reviser's note:** "this 1979 act" [1979 ex.s. c 135] consists of RCW 38.40.071, 50.20.117; the amendments to RCW 2.36.060, 2.36.080, 2.36.100, 2.36.150, 12.12.050, 35.20.090 and 72.23.050 by 1979 ex.s. c 135; and the repeal of RCW 4.44.200 and 38.40.090 by 1979 ex.s. c 135.

Severability—1979 ex.s. c 135: See note following RCW 2.36.060.

2.36.090 Jury terms—Jury, how selected. Jury terms shall commence on the first Monday of each month, and shall end on the Saturday preceding the first Monday of each month, unless the day of commencing or ending said term be changed by order of the judge or judges of the superior court; but it shall not be necessary to call a jury for any term in any county unless the judge or judges of the superior court of that county shall consider that there is sufficient business to be submitted to a jury to require that one be called. When the judge or judges of the superior court of any county shall deem that the public business requires a jury term to be held, he or they shall require the county clerk to draw jurors to serve for the ensuing term. The county clerk, not more than forty nor less than fourteen days preceding the beginning of a jury term, shall be blindfolded, and in the presence of the judge or one of the judges or of a court commissioner of the superior court shall draw from the jury boxes the names of such number of persons as may have been ordered summoned as jurors for the ensuing term: *Provided*, That at any time or for any period or periods of time the judge or judges may direct by rule or order that all or any number or proportion of the jurors thereafter to be drawn shall be drawn to serve for two successive terms, to the end that not all of the jurors serving during a given period shall cease their service at the same time. The names shall be drawn in equal numbers from each jury box, and before the drawing is made the boxes shall be shaken up so that the slips bearing the names thereon may be thoroughly mixed, and the drawing of the slips shall depend purely upon chance. [1965 c 65 § 1; 1925 ex.s. c 191 § 2; 1911 c 57 § 4; RRS § 97. Prior: 1909 c 73 § 4.]

2.36.093 Selection of jurors—Electronic data processing random selection method. At such time as the judge or judges of the superior court of any county shall deem that the public business requires a jury term to be held, he or they shall direct the county clerk to select jurors to serve for the ensuing term, pursuant to RCW 2.36.090. In any county in which the judge or judges have chosen to employ the electronic data process random selection method as provided for in RCW 2.36.063, the county clerk shall within the first fifteen days of the calendar month preceding the month on which the jurors are to be called to serve, cause the names of the jurors to be selected from the master list of prospective jurors for the year placed on file in his office.

The name of a person once selected for a jury term shall be excluded from selection of jurors for subsequent terms in that jury year unless otherwise ordered by the judge or judges of superior court: *Provided*, That at any time or for any period or periods of time, the judge or judges may direct by rule or order that all or any number or proportion of the jurors thereafter to be selected shall be selected to serve for two successive terms, to the end that not all of the jurors serving during a given period shall cease their service at the same time.

It shall be the duty and responsibility of the judge or judges of the superior court to insure that such electronic data processing system or device is employed so as

to insure continued random selection of the master jury list and jurors. To that end, the judge or judges shall review the process from time to time and shall cause to be kept on file with the county clerk a description of the jury selection process. Any person who desires may inspect this description in said office.

Nothing in RCW 2.36.063 and 2.36.093 shall be construed as requiring uniform equipment or method throughout the state, so long as fair and random selection of the master jury list and jurors is achieved. [1973 2nd ex.s. c 13 § 2.]

2.36.100 Excuse from service—Reasons—Certification of prior jury service. Except for a person who is not qualified for jury service under RCW 2.36.070, no person may be excused from jury service by the court except upon a showing of undue hardship, extreme inconvenience, public necessity, prior jury service twice in the last five years, or any reason deemed sufficient by the court for a period of time the court deems necessary. An excuse for prior service shall apply only in class AA and class A counties, and shall be granted only upon the written request of the prospective juror, which request shall certify the terms of prior service. Prior jury service may include service in superior court, a court of limited jurisdiction or in the United States District Court. [1983 c 181 § 1; 1979 ex.s. c 135 § 3; 1911 c 57 § 7; RRS § 100. Prior: 1909 c 73 § 7.]

Severability—1979 ex.s. c 135: See note following RCW 2.36.060.

2.36.110 Judge must excuse unfit persons. It shall be the duty of a superior judge to excuse from further jury service any juror, who in the opinion of the judge, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service. [1925 ex.s. c 191 § 3; RRS § 97-1.]

2.36.130 Additional names—Open venire by stipulation. If for any reason the jurors drawn for service upon a petit jury for any term shall not be sufficient to dispose of the pending jury business, or where no jury is in regular attendance and the business of the court may require the attendance of a jury before a regular term, the judge or judges of the superior court may draw from the jury list such additional names as they may consider necessary, and the persons whose names are so drawn shall thereupon be summoned to serve as jurors forthwith. The judge or judges drawing such additional names, may, in his or their discretion, order and direct that, of such additional jurors, only those living nearest to the county seat or most conveniently reached and found shall be at first summoned by the sheriff, and at any time when a sufficiency of such persons has been summoned and produced in court, such judge or judges may, in his or their discretion, order and direct the sheriff not to summon the remainder of the additional jurors so drawn. By stipulation or agreement made in open court as a part of the record, the parties to any action may agree that an open venire may be issued to make up

a jury in that action, and upon order of the court approving such stipulation and directing the number of jurors to be drawn, the clerk shall issue an open venire, and the sheriff shall fill the same by summoning from the bystanders, or elsewhere, a sufficient number of persons to fill the open venire. [1911 c 57 § 6; RRS § 99.]

2.36.140 Separation of jury. In no action or proceeding whatever, except felony cases shall the jury sworn to try the issues therein be kept together and in the custody of the officers of the court, save during the actual progress of the trial, until the case shall have been finally submitted to them for their decision. Whenever the jury are kept together in the custody of the officers when the trial is not in progress, they shall be supplied with meals at regular hours, and with comfortable sleeping and toilet accommodations. [1911 c 57 § 8; RRS § 101. Prior: 1909 c 73 § 8.]

Admonitions to jurors—Separation: RCW 4.44.280.
Care of jury while deliberating: RCW 4.44.300.

2.36.150 Compensation of jurors—Reimbursement of counties for jury and witness fees in certain cases. Jurors shall receive for each day's attendance, besides mileage at the rate determined under RCW 43.03.060, the following compensation:

- (1) Grand jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (2) Petit jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (3) Coroner's jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (4) District court jurors may receive up to twenty-five dollars but in no case less than ten dollars:

Provided, That a person excused from jury service at his or her own request shall be allowed not more than a per diem and such mileage, if any, as to the court shall seem just and equitable under all circumstances: *Provided further,* That the state shall fully reimburse the county in which trial is held for all jury fees and witness fees related to criminal cases which result from incidents occurring within an adult or juvenile correctional institution: *Provided further,* That the compensation paid jurors shall be determined by the county legislative authority and shall be uniformly applied within the county. [1987 c 202 § 105; 1979 ex.s. c 135 § 7; 1975 1st ex.s. c 76 § 1; 1959 c 73 § 1; 1951 c 51 § 2; 1943 c 188 § 1; 1933 c 52 § 1; 1927 c 171 § 1; 1907 c 56 § 1, part; Rem. Supp. 1943 § 4229. Prior: 1903 c 151 § 1, part; 1893 p 421 § 1, part; Code 1881 § 2086, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—1979 ex.s. c 135: See note following RCW 2.36.060.
Travel expense in lieu of mileage in certain cases: RCW 2.40.030.

2.36.160 Jury of inquest defined. A jury of inquest is a body of men six in number summoned from the qualified inhabitants of a particular district, before the coroner or other ministerial officer, to inquire of particular facts. [1891 c 48 § 5; RRS § 93.]

County coroner: Chapter 36.24 RCW.

Human remains: Chapter 68.50 RCW.

Chapter 2.40 WITNESSES

Sections

- 2.40.010 Witness fees and mileage.
2.40.020 Witness fee and mileage in civil cases demandable in advance.
2.40.030 Travel expense in lieu of mileage in certain cases.
2.40.040 Attorney of record not entitled to witness fee in case.

Discovery and depositions: Title 5 RCW; see also Rules of Court: CR 26–37.

District courts, witnesses: Chapter 12.16 RCW.

Utilities and transportation commission proceedings, witness fees: RCW 80.04.040, 81.04.040.

Witness fees and mileage in criminal cases: RCW 10.01.130, 10.01-.140, 10.52.040.

Witnesses: Chapters 5.56 and 5.60 RCW.

2.40.010 Witness fees and mileage. Witnesses shall receive for each day's attendance in all courts of record of this state the same compensation per day and per mile as jurors in superior court. Witnesses in any other court shall receive for each day's attendance the same compensation per day and per mile as jurors in district court. [1987 c 202 § 106; 1977 ex.s. c 54 § 1; 1951 c 51 § 3; 1907 c 56 § 1, part; RRS § 497, part. Prior: 1903 c 151 § 1, part; 1893 p 421 § 1, part; Code 1881 § 2086, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

2.40.020 Witness fee and mileage in civil cases demandable in advance. Witnesses in civil cases shall be entitled to receive, upon demand, their fees for one day's attendance, together with mileage going to the place where they are required to attend, if such demand is made to the officer or person serving the subpoena at the time of service. [Code 1881 § 2100; 1869 p 374 § 22; RRS § 507.]

2.40.030 Travel expense in lieu of mileage in certain cases. Whenever a juror, witness or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof he may at his option receive his actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. At the close of each term of the district court, the clerk shall ascertain the amount due each juror for his mileage and per diem; and he shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody charged with or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court or judge, shall be a charge upon the county to which the prisoner belongs; and he shall also certify the amount which may be due witnesses attending from another county in a criminal case for their fees, which, when approved by the court or judge, shall be a charge upon the

county to which the case belongs. [Code 1881 § 2109; 1869 p 419 § 7; 1863 p 424 §§ 6, 8; RRS §§ 509, 4230.]

Compensation of jurors: RCW 2.36.150.

County officers—Expenses: RCW 42.24.090.

Salaried officers not to receive witness fees: RCW 42.16.020.

State officers—Subsistence and mileage: RCW 43.03.050, 43.03.060.

Witness fees as costs in civil actions: RCW 4.84.090.

2.40.040 Attorney of record not entitled to witness fee in case. No attorney in any case shall be allowed any fees as a witness in such case. [Code 1881 § 2095; 1869 p 374 § 17; RRS § 502.]

Chapter 2.42

INTERPRETERS IN LEGAL PROCEEDINGS

Sections

- 2.42.010 Legislative declaration—Intent.
2.42.020 Definitions.
2.42.030 Appointment of interpreters.
2.42.040 Interpreters—Compensation and expenses—Costs.
2.42.050 Oath.
2.42.110 Definitions.
2.42.120 Appointment, pay.
2.42.130 Source of interpreters, qualifications.
2.42.140 Intermediary interpreter, when.
2.42.150 Waiver of right to interpreter.
2.42.160 Privileged communications.
2.42.170 Fee.
2.42.180 Visual recording of testimony.

Rules of court: ER 604.

2.42.010 Legislative declaration—Intent. It is hereby declared to be the policy of this state to secure the constitutional rights of deaf persons and of other persons who, because of impairment of hearing or speech, or non-English-speaking cultural background are unable to readily understand or communicate the spoken English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the appointment of such interpreters. [1983 c 222 § 1; 1973 c 22 § 1.]

2.42.020 Definitions. As used in this chapter (1) an "impaired person" is any person involved in a legal proceeding who is deaf or who, because of other hearing or speech defects, or because of non-English-speaking cultural background cannot readily understand or communicate in spoken language or readily speak or understand the English language and who, when involved as a party to a legal proceeding, is unable by reason of such defects to obtain due process of law; (2) a "qualified interpreter" is one who is able readily to translate spoken and written English to and for impaired persons and to translate statements of impaired persons into spoken English; (3) "legal proceeding" is a proceeding in any court in this state, at grand jury hearings or hearings before an inquiry judge, or before administrative boards, commissions, agencies, or licensing bodies of the state or

any political subdivision thereof. [1983 c 222 § 2; 1973 c 22 § 2.]

2.42.030 Appointment of interpreters. When an impaired person is a party to any legal proceeding or a witness therein the judge, magistrate, or other presiding official shall, in the absence of a written waiver by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. [1973 c 22 § 3.]

2.42.040 Interpreters—Compensation and expenses—Costs. Interpreters appointed pursuant to this chapter shall be adequately compensated for their services and shall be reimbursed for actual expenses as hereinafter provided:

(1) In criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the proceedings.

(2) In other legal proceedings the cost of providing the interpreter shall be borne by the impaired person unless the impaired person is indigent, pursuant to adopted standards of the body, and thus unable to pay for the interpreter, in which case the cost shall be borne as an administrative cost of the governmental body under the authority of which the proceeding is conducted.

(3) The cost of providing the interpreter may be a taxable cost of any proceeding in which costs are ordinarily taxed. [1973 c 22 § 4.]

2.42.050 Oath. Every qualified interpreter appointed under this chapter in a judicial or administrative proceeding shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or other agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment. [1985 c 389 § 20; 1973 c 22 § 5.]

Rules of court: ER 604.

2.42.110 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Hearing impaired person" means a person who, because of a hearing impairment, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.

(2) "Qualified interpreter" means an interpreter who is certified by the registry of interpreters for the deaf with the certificate level specified below and who meets the requirements of RCW 2.42.130.

(a) For judicial proceedings involving a class A felony, use of the services of a qualified interpreter holding the specialist certificate—legal is required.

(b) For other judicial, quasi-judicial, or administrative proceedings, use of the services of a qualified interpreter holding the specialist certificate—legal, master's comprehensive skills certificate, or comprehensive skills certificate is required.

(c) For programs and activities other than judicial or administrative proceedings, the services of a qualified interpreter holding a partial certification shall be required. Efforts to obtain the services of a qualified interpreter holding the master's comprehensive certificate or comprehensive skills certificate shall be made before obtaining the services of a qualified interpreter holding the interpreting certificate and/or the transliterating certificate.

(4) "Intermediary interpreter" means a hearing impaired interpreter who is certified by the registry of interpreters for the deaf with a reverse skills certificate, who meets the requirements of RCW 2.42.130, and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified hearing interpreter.

(5) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision. [1985 c 389 § 11:]

2.42.120 Appointment, pay. (1) If a hearing impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision, including but not limited to civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing impaired person may be subject to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

(2) If the parent, guardian, or custodian of a juvenile brought before a court is hearing impaired, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

(3) If a hearing impaired person participates in a program or activity ordered by a court as part of the sentence or order of disposition, required as part of a diversion agreement or deferred prosecution program, or required as a condition of probation or parole, the appointing authority shall appoint and pay for a qualified interpreter to interpret exchange of information during the program or activity.

(4) If a law enforcement agency conducts a criminal investigation involving the interviewing of a hearing impaired person, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. Whenever a law enforcement agency conducts a criminal investigation involving the interviewing of a minor child

whose parent, guardian, or custodian is hearing impaired, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.

(5) If a hearing impaired person is arrested for an alleged violation of a criminal law the arresting officer or the officer's supervisor shall, at the earliest possible time, procure and arrange payment for a qualified interpreter for any notification of rights, warning, interrogation, or taking of a statement. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.

(6) Where it is the policy and practice of a court of this state or of a political subdivision to appoint and pay counsel for persons who are indigent, the appointing authority shall appoint and pay for a qualified interpreter for hearing impaired persons to facilitate communication with counsel in all phases of the preparation and presentation of the case. [1985 c 389 § 12.]

2.42.130 Source of interpreters, qualifications. (1) If a qualified interpreter for a hearing impaired person is required, the appointing authority shall request a qualified interpreter through the department of social and health services, office of deaf services, or through any community center for hearing impaired persons which operates an interpreter referral service. The office of deaf services and these community centers shall maintain an up-to-date list of interpreters certified by the registry of interpreters for the deaf.

(2) The appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the hearing impaired person, that the interpreter is able in that particular proceeding, program, or activity to interpret accurately all communication to and from the hearing impaired person. If at any time during the proceeding, program, or activity, in the opinion of the hearing impaired person or a qualified observer, the interpreter does not provide accurate and effective communication with the hearing impaired person the appointing authority shall appoint another qualified interpreter. No otherwise qualified interpreter who is a relative of any participant in the proceeding may be appointed. [1985 c 389 § 13.]

2.42.140 Intermediary interpreter, when. If the communication mode or language of the hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the appointing authority who shall appoint and pay an intermediary interpreter to assist the qualified interpreter. [1985 c 389 § 14.]

2.42.150 Waiver of right to interpreter. (1) The right to a qualified interpreter may not be waived except when:

(a) A hearing impaired person requests a waiver through the use of a qualified interpreter;

(b) The counsel, if any, of the hearing impaired person consents; and

(c) The appointing authority determines that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter shall not preclude the hearing impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding, program, or activity. [1985 c 389 § 15.]

2.42.160 Privileged communications. (1) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law.

(2) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending. [1985 c 389 § 16.]

2.42.170 Fee. A qualified interpreter appointed under this chapter is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services. [1985 c 389 § 17.]

2.42.180 Visual recording of testimony. At the request of any party to the proceeding or on the appointing authority's initiative, the appointing authority may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding.

In any judicial proceeding involving a capital offense, the appointing authority shall order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use in verification of the official transcript of the proceeding. [1985 c 389 § 18.]

Chapter 2.44

ATTORNEYS AT LAW

Sections

2.44.010	Authority of attorney.
2.44.020	Appearance without authority—Procedure.
2.44.030	Production of authority to act.
2.44.040	Change of attorneys.
2.44.050	Notice of change and substitution.
2.44.060	Proceedings on death or removal of attorney.

Rules of court: See Code of professional responsibility.

Attorney as witness: Rules of court: CR 43(g); Code of Professional Responsibility—DR 5-102.

Attorney fee in appeals from board of industrial insurance appeals: RCW 51.52.130.

Legal aid: Chapter 2.50 RCW.

Lien for attorney's fees: Chapter 60.40 RCW.

Prosecuting attorneys, duties in general: Chapter 36.27 RCW.

Salaried attorney of trust company or national bank not allowed fee for probating estate: RCW 11.36.010.

2.44.010 Authority of attorney. An attorney and counselor has authority:

(1) To bind his client in any of the proceedings in an action or special proceeding by his agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney;

(2) To receive money claimed by his client in an action or special proceeding, during the pendency thereof, or after judgment upon the payment thereof, and not otherwise, to discharge the same or acknowledge satisfaction of the judgment;

(3) This section shall not prevent a party [from] employing a new attorney or from issuing an execution upon a judgment, or from taking other proceedings prescribed by statute for its enforcement. [Code 1881 § 3280; 1863 p 404 § 6; RRS § 130.]

2.44.020 Appearance without authority—Procedure. If it be alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his act; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his assumption of authority. [Code 1881 § 3281; 1863 p 405 § 7; RRS § 131.]

2.44.030 Production of authority to act. The court, or a judge, may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear. [Code 1881 § 3282; 1863 p 405 § 8; RRS § 132.]

2.44.040 Change of attorneys. The attorney in an action or special proceeding, may be changed at any time before judgment or final determination as follows:

(1) Upon his own consent, filed with the clerk or entered upon the minutes; or

(2) Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change to be made. [Code 1881 § 3283; 1863 p 405 § 9; RRS § 133.]

2.44.050 Notice of change and substitution. When an attorney is changed, as provided in RCW 2.44.040, written notice of the change, and of the substitution of a

new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he shall be bound to recognize the former attorney. [Code 1881 § 3284; 1863 p 405 § 10; RRS § 134.]

2.44.060 Proceedings on death or removal of attorney. When an attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney, must, at least twenty days before any further proceedings against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person. [Code 1881 § 3285; 1863 p 405 § 11; RRS § 135.]

Chapter 2.48 STATE BAR ACT

Sections

2.48.010	Objects and powers.
2.48.020	First members.
2.48.021	New members.
2.48.030	Board of governors.
2.48.035	Board of governors—Membership, effect of creation of new congressional districts or boundaries.
2.48.040	State bar governed by board of governors.
2.48.050	Powers of governors.
2.48.060	Admission and disbarment.
2.48.070	Admission of veterans.
2.48.080	Admission of veterans—Establishment of requirements if in service.
2.48.090	Admission of veterans—Establishment of requirements if discharged.
2.48.100	Admission of veterans—Effect of disability discharge.
2.48.110	Admission of veterans—Fees of veterans.
2.48.130	Membership fee—Active.
2.48.140	Membership fee—Inactive.
2.48.150	Admission fees.
2.48.160	Suspension for nonpayment of fees.
2.48.170	Only active members may practice law.
2.48.180	Unlawful practice a misdemeanor.
2.48.190	Qualifications on admission to practice.
2.48.200	Restrictions on practice by certain officers.
2.48.210	Oath on admission.
2.48.220	Grounds of disbarment or suspension.
2.48.230	Code of ethics.

Rules of court: See *Rules of Professional Responsibility, Rules for Lawyer Discipline, also Admission to Practice Rules.*

Judicial council, membership on: RCW 2.52.010.

Law revision commission: Chapter 1.30 RCW.

School district hearings, hearing officers as members of state bar association: RCW 28A.58.455.

Statute law committee, membership on: RCW 1.08.001.

2.48.010 Objects and powers. There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the state bar, which association shall have a common seal and may sue and be sued, and which may, for the purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto. [1933 c 94 § 2; RRS § 138-2.]

Severability—1933 c 94: "If any section, subsection, sentence, clause or phrase of this act or any rule adopted thereunder, is for any

reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act nor of any other rule adopted hereunder. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional." [1933 c 94 § 17.]

Short title—1933 c 94: "This act may be known and cited as the State Bar Act." [1933 c 94 § 1.]

The foregoing annotations apply to RCW 2.48.010, 2.48.020, 2.48.030, 2.48.040, 2.48.050, and 2.48.060, 2.48.130 through 2.48.180, inclusive.

2.48.020 First members. The first members of the Washington State Bar Association shall be all persons now [on June 7, 1933] entitled to practice law in this state. [1933 c 94 § 3; RRS § 138-3. FORMER PART OF SECTION: 1933 c 94 § 4; RRS § 138-4 now codified as RCW 2.48.021.]

2.48.021 New members. After the organization of the state bar, as herein provided, all persons who are admitted to practice in accordance with the provisions of RCW 2.48.010 through 2.48.180, except judges of courts of record, shall become by that fact active members of the state bar. [1933 c 94 § 4; RRS § 138-4. Formerly RCW 2.48.020, part.]

2.48.030 Board of governors. There is hereby constituted a board of governors of the state bar which shall consist of not more than fifteen members, to include: The president of the state bar elected as provided by the bylaws of the association, one member from each congressional district now or hereafter existing in the state elected by secret ballot by mail by the active members residing therein, and such additional members elected as provided by the bylaws of the association. The members of the board of governors shall hold office for three years and until their successors are elected and qualified. Any vacancies in the board of governors shall be filled by the continuing members of the board until the next election, held in accordance with the bylaws of the association.

The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. [1982 1st ex.s. c 30 § 1; 1972 ex.s. c 66 § 1; 1933 c 94 § 5; RRS § 138-5.]

2.48.035 Board of governors—Membership, effect of creation of new congressional districts or boundaries. The terms of office of members of the board of governors of the state bar who are elected from the various congressional districts shall not be affected by the creation of either new boundaries for congressional districts or additional districts. In such an event, each board member so elected may continue to serve in office for the balance of the term for which he or she was elected or appointed: *Provided*, That the board member continues to reside within the boundaries of the congressional district as they existed at the time of his or her election

or appointment. Vacancies which occur in a board member position during the balance of any such term shall be filled pursuant to RCW 2.48.030, as now or hereafter amended, by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was elected as they existed at the time of his or her election. At the election immediately preceding expiration of the term of office of each board member provided for in this section following the creation of either new boundaries for congressional districts or additional districts, and thereafter, a successor shall be elected from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed or elected. [1982 1st ex.s. c 30 § 2.]

2.48.040 State bar governed by board of governors. The state bar shall be governed by the board of governors which shall be charged with the executive functions of the state bar and the enforcement of the provisions of RCW 2.48.010 through 2.48.180 and all rules adopted in pursuance thereof. The members of the board of governors shall receive no salary by virtue of their office. [1933 c 94 § 6; RRS § 138-6.]

2.48.050 Powers of governors. The said board of governors shall have power, in its discretion, from time to time to adopt rules

(1) concerning membership and the classification thereof into active, inactive and honorary members; and

(2) concerning the enrollment and privileges of membership; and

(3) defining the other officers of the state bar, the time, place and method of their selection, and their respective powers, duties, terms of office and compensation; and

(4) concerning annual and special meetings; and

(5) concerning the collection, the deposit and the disbursement of the membership and admission fees, penalties, and all other funds; and

(6) providing for the organization and government of district and/or other local subdivisions of the state bar; and

(7) providing for all other matters, whether similar to the foregoing or not, affecting in any way whatsoever, the organization and functioning of the state bar. Any such rule may be modified, or rescinded, or a new rule adopted, by a vote of the active members under rules to be prescribed by the board of governors. [1933 c 94 § 7; RRS § 138-7.]

2.48.060 Admission and disbarment. The said board of governors shall likewise have power, in its discretion, from time to time to adopt rules, subject to the approval of the supreme court, fixing the qualifications, requirements and procedure for admission to the practice of law; and, with such approval, to establish from time to time and enforce rules of professional conduct for all members of the state bar; and, with such approval, to appoint boards or committees to examine applicants for admission; and, to investigate, prosecute and hear all

causes involving discipline, disbarment, suspension or reinstatement, and make recommendations thereon to the supreme court; and, with such approval, to prescribe rules establishing the procedure for the investigation and hearing of such matters, and establishing county or district agencies to assist therein to the extent provided by such rules: *Provided, however*, That no person who shall have participated in the investigation or prosecution of any such cause shall sit as a member of any board or committee hearing the same. [1933 c 94 § 8; RRS § 138-8.]

Rules of court: See Rules for Lawyer Discipline, also Admission to Practice Rules.

2.48.070 Admission of veterans. Any person who shall have graduated from any accredited law school and after such graduation shall have served in the armed forces of the United States of America between December 7, 1941, and the termination of the present World War, may be admitted to the practice of law in the state of Washington and to membership in the Washington State Bar Association, upon motion made before the supreme court of the state of Washington, provided the following is made to appear:

(1) That the applicant is a person of good moral character over the age of twenty-one years;

(2) That the applicant, at the time of entering the armed forces of the United States, was a legal resident of the state of Washington;

(3) That the applicant's service in the armed forces of the United States is or was satisfactory and honorable. [1945 c 181 § 1; Rem. Supp. 1945 § 138-7A.]

Qualifications for admission to practice as prescribed by Rules of court: Admission to Practice Rules.

2.48.080 Admission of veterans—Establishment of requirements if in service. If an applicant under RCW 2.48.070 through 2.48.110 is, at the time he applies for admission to practice law in the state of Washington, still in the armed forces of the United States, he may establish the requirements of the proviso in RCW 2.48.070 by a letter or certificate from his commanding officer and by the certificates of at least two active members of the Washington State Bar Association. [1945 c 181 § 2; Rem. Supp. 1945 § 138-7B.]

2.48.090 Admission of veterans—Establishment of requirements if discharged. If an applicant under RCW 2.48.070 through 2.48.110 is, at the time he applies for admission to practice law in the state of Washington, no longer in the armed forces of the United States, he may establish the requirements of the proviso in RCW 2.48.070 as follows:

(1) If he shall have been an enlisted person, by producing an honorable discharge, and by the certificates of at least two active members of the Washington State Bar Association.

(2) If he shall have been an officer, by an affidavit showing that he has been relieved from active duty under circumstances other than dishonorable, and by the certificates of at least two active members of the

Washington State Bar Association. [1945 c 181 § 3; Rem. Supp. 1945 § 138-7C.]

2.48.100 Admission of veterans—Effect of disability discharge. A physical disability discharge shall be considered an honorable discharge unless it be coupled with a dishonorable discharge. [1945 c 181 § 4; Rem. Supp. 1945 § 138-7D.]

2.48.110 Admission of veterans—Fees of veterans. An applicant applying for admission to practice law under the provisions of RCW 2.48.070 through 2.48.090, shall pay the same fees as are required of residents of the state of Washington seeking admission to practice law by examination. [1945 c 181 § 5; Rem. Supp. 1945 § 138-7E.]

2.48.130 Membership fee—Active. The annual membership fees for active members shall be payable on or before February 1st of each year. The board of governors may establish the amount of such annual membership fee to be effective each year: *Provided*, That written notice of any proposed increase in membership fee shall be sent to active members not less than sixty days prior to the effective date of such increase: *Provided further*, That the board of governors may establish the fee at a reduced rate for those who have been active members for less than five years in this state or elsewhere. [1957 c 138 § 1; 1953 c 256 § 1; 1933 c 94 § 9; RRS § 138-9.]

2.48.140 Membership fee—Inactive. The annual membership fee for inactive members shall be the sum of two dollars, payable on or before the first day of February of each year. [1955 c 34 § 1; 1933 c 94 § 10; RRS § 138-10.]

2.48.150 Admission fees. Applicants for admission to the bar upon accredited certificates or upon examination, not having been admitted to the bar in another state or territory, shall pay a fee of twenty-five dollars and all other applicants a fee of fifty dollars. Said admission fees shall be used to pay the expenses incurred in connection with examining and admitting applicants to the bar, including salaries of examiners, and any balance remaining at the close of each biennium shall be paid to the state treasurer and be by him credited to the general fund. [1933 c 94 § 11; RRS § 138-11.]

Rules of court: Admission—APR 3(d).

2.48.160 Suspension for nonpayment of fees. Any member failing to pay any fees after the same become due, and after two months' written notice of his delinquency, must be suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee. [1933 c 94 § 12; RRS § 138-12.]

2.48.170 Only active members may practice law. No person shall practice law in this state subsequent to the

first meeting of the state bar unless he shall be an active member thereof as hereinbefore defined: *Provided*, That a member of the bar in good standing in any other state or jurisdiction shall be entitled to appear in the courts of this state under such rules as the board of governors may prescribe. [1933 c 94 § 13; RRS § 138-13.]

Rules of court: Admission—APR 5.

2.48.180 Unlawful practice a misdemeanor. Any person who, not being an active member of the state bar, or who after he has been disbarred or while suspended from membership in the state bar, as by this chapter provided, shall practice law, or hold himself out as entitled to practice law, shall be guilty of a misdemeanor: *Provided, however*, Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive relief or to punish as for contempt. [1933 c 94 § 14; RRS § 138-14.]

Rules of court: RLD 1.1(h).

Practicing law with disbarred attorney: RCW 2.48.220(9).

2.48.190 Qualifications on admission to practice. No person shall be permitted to practice as an attorney or counselor at law or to do work of a legal nature for compensation, or to represent himself or herself as an attorney or counselor at law or qualified to do work of a legal nature, unless he or she is a citizen of the United States and a bona fide resident of this state and has been admitted to practice law in this state: *Provided*, That any person may appear and conduct his or her own case in any action or proceeding brought by or against him or her, or may appear in his or her own behalf in the small claims department of the district court: *And provided further*, That an attorney of another state may appear as counselor in a court of this state without admission, upon satisfying the court that his or her state grants the same right to attorneys of this state. [1987 c 202 § 107; 1921 c 126 § 4; RRS § 139-4. Prior: 1919 c 100 § 1; 1917 c 115 § 1.]

Reviser's note: Last proviso, see later enactment, RCW 2.48.170.

Rules of court: Admission—APR 5.

Intent—1987 c 202: See note following RCW 2.04.190.

2.48.200 Restrictions on practice by certain officers. No person shall practice law who holds a commission as judge in any court of record, or as sheriff, coroner, or deputy sheriff; nor shall the clerk of the supreme court, the court of appeals, or of the superior court or any deputy thereof practice in the court of which he is clerk or deputy clerk: *Provided*, It shall be unlawful for a deputy prosecuting attorney, or for the employee, partner, or agent of a prosecuting attorney, or for an attorney occupying offices with a prosecuting attorney, to appear for an adverse interest in any proceeding in which a prosecuting attorney is appearing, or to appear in any suit, action or proceeding in which a prosecuting attorney is prohibited by law from appearing, but nothing herein shall prohibit a prosecuting attorney or a deputy prosecuting attorney from appearing in any action or proceeding for an interest divergent from that

represented in the same action or proceeding by another attorney or special attorney in or for the same office, so long as such appearances are pursuant to the duties of prosecuting attorneys as set out in RCW 36.27.020 and such appearances are consistent with the code of professional responsibility or other code of ethics adopted by the Washington state supreme court, but nothing herein shall preclude a judge or justice of a court of this state from finishing any business by him undertaken in a court of the United States prior to his becoming a judge or justice. [1975 1st ex.s. c 19 § 3; 1971 c 81 § 13; 1921 c 126 § 5; RRS § 139-5.]

Rules of court: Judicial ethics—CJC.

Clerk not to practice law: RCW 2.32.090.

Coroner not to practice law: RCW 36.24.170.

Judges may not practice law: State Constitution Art. 4 § 19.

Sheriff not to practice law: RCW 36.28.110.

2.48.210 Oath on admission. Every person before being admitted to practice law in this state shall take and subscribe the following oath:

I do solemnly swear:

I am a citizen of the United States and owe my allegiance thereto;

I will support the Constitution of the United States and the Constitution of the state of Washington;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God. [1921 c 126 § 12; RRS § 139-12. Prior: 1917 c 115 § 14.]

Rules of court: Admission—APR 5(c) and (d).

2.48.220 Grounds of disbarment or suspension. An attorney or counselor may be disbarred or suspended for any of the following causes arising after his admission to practice:

(1) His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence.

(2) Wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected

with, or in the course of, his profession, which he ought in good faith to do or forbear.

(3) Violation of his oath as an attorney, or of his duties as an attorney and counselor.

(4) Corruptly or wilfully, and without authority, appearing as attorney for a party to an action or proceeding.

(5) Lending his name to be used as attorney and counselor by another person who is not an attorney and counselor.

(6) For the commission of any act involving moral turpitude, dishonesty or corruption, whether the same be committed in the course of his relations as an attorney or counselor at law, or otherwise, and whether the same constitute a felony or misdemeanor or not; and if the act constitute a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disbarment or suspension from practice therefor.

(7) Misrepresentation or concealment of a material fact made in his application for admission or in support thereof.

(8) Disbarment by a foreign court of competent jurisdiction.

(9) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney or with any person not a licensed attorney.

(10) Gross incompetency in the practice of the profession.

(11) Violation of the ethics of the profession. [1921 c 126 § 14; 1909 c 139 § 7; RRS § 139-14.]

Rules of court: RLD 1.1.

2.48.230 Code of ethics. The code of ethics of the American Bar Association shall be the standard of ethics for the members of the bar of this state. [1921 c 126 § 15; RRS § 139-15. Prior: 1917 c 115 § 20.]

Reviser's note: RCW 2.48.190, 2.48.200, 2.48.210, 2.48.220, and 2.48.230 are the only sections of the earlier act relating to the admission, regulation, disbarment, etc., of attorneys which are thought not to be embraced within the general repeal contained in the state bar act of 1933.

Rules of court: See Code of Professional Responsibility, also Code of Judicial Conduct.

Chapter 2.50 LEGAL AID

Sections

2.50.010	Legal aid defined.
2.50.020	Public interest.
2.50.040	Declaration of necessity by board of county commissioners.
2.50.050	Legal aid bureau defined.
2.50.060	Board of governors—Authority.

2.50.070	Legal aid county committee created.
2.50.080	Legal aid supervision.
2.50.090	Registration fees and private funds.
2.50.100	Limitation of legal aid.
2.50.110	Attorneys' fees.
2.50.120	County funds.
2.50.125	Cities authorized to appropriate funds.
2.50.130	Revocation of declaration of necessity.
2.50.140	Washington State Bar Association not restricted.
2.50.150	Certain other acts not applicable.
2.50.160	Chapter not exclusive—Counties authorized to provide legal aid.

2.50.010 Legal aid defined. Legal aid is the rendition, without compensation, of professional services by an active member of the Washington State Bar Association to or for any indigent person unable to pay a reasonable attorney's fee determined in accordance with the established code of legal ethics. [1939 c 93 § 1; RRS § 10007-201. Formerly RCW 74.36.010.]

2.50.020 Public interest. The promotion of organized legal aid is hereby declared to be in the public interest. [1939 c 93 § 2; RRS § 10007-202. Formerly RCW 74.36.020.]

2.50.040 Declaration of necessity by board of county commissioners. The board of county commissioners (hereinafter called the county board) is empowered to find by resolution the existence of a necessity in such county for organized legal aid. Such resolution shall specify the amount of county funds thereby to be allocated for and expended in the operation of a legal aid bureau during the period of the fiscal year or the remainder thereof. Within ten days after the passage of such a resolution, the commissioners shall cause a certified copy to be transmitted to the board of governors of the Washington State Bar Association (hereinafter called the bar board). [1939 c 93 § 4; RRS § 10007-204. Formerly RCW 74.36.040.]

2.50.050 Legal aid bureau defined. A legal aid bureau (hereinafter called the bureau), is an agency for the rendition of organized legal aid to indigent persons resident in the county, consisting of one director, who shall be an attorney resident in the county, and who shall be in good standing and active membership in the Washington State Bar Association, together with such professional and other personnel, such office facilities, and other equipment, as may be determined by the bar board and be financed by the county board. [1939 c 93 § 5; RRS § 10007-205. Formerly RCW 74.36.050.]

2.50.060 Board of governors—Authority. Upon receipt of a certified copy of such resolution the bar board is empowered and, within sixty days thereafter, is obligated to create and continue a legal aid bureau as soon and as long as the necessary funds so allocated are made available by the county board, all expenditures for the bureau to be limited to county funds so supplied, except only as hereinafter authorized. The bar board is vested with the ultimate power to control by its rules and regulations such bureau, the immediate supervision of which in actual operation shall be by the bar board itself

or by a committee of its selection. [1939 c 93 § 6; RRS § 10007–206. Formerly RCW 74.36.060.]

2.50.070 Legal aid county committee created. The legal aid county committee (hereinafter called the committee), if created and continued by resolution of the bar board, shall consist of three members chosen by the bar board as follows: a member of the bar board, who shall be chairman, a judge of the superior court of the county, and an active member of the Washington State Bar Association, resident in the county. [1939 c 93 § 7; RRS § 10007–207. Formerly RCW 74.36.070.]

2.50.080 Legal aid supervision. Among the powers to supervise the actual operation of any such bureau, which shall be exercised either by the bar board itself or in its discretion by the committee, are the following:

(1) To appoint and remove at will the director and to fix the amount of his salary not in excess of two hundred dollars per month;

(2) To engage and discharge all other employees of the bureau and to fix their salaries or remuneration;

(3) To assist the director in supplying the free services of attorneys for the bureau;

(4) To cooperate with the dean of any law school now or hereafter established within this state respecting the participation of law students in the rendition of services by the bureau under the guidance of the director—however, by this provision, no law student shall be deemed authorized to represent as an attorney in a court of record any legal aid client;

(5) To require of the director periodically written statements of account and written reports upon any and all subjects within the operation of the bureau;

(6) To prescribe rules and regulations, always subject to the bar board, for determination of the indigent persons who are entitled to legal aid, for determination of the kinds of legal problems and cases subject to legal aid, and for determination of all operative legal aid policies not inconsistent with this chapter;

(7) To advise the county board, for its budget upon its written request, as to the estimated amount of county funds reasonably required to effectively operate the bureau for the ensuing fiscal year;

(8) To receive county funds allocated by the county board for the bureau, and to render an account thereof at the times and in the manner reasonably required by the county board;

(9) To disburse such county funds, after receipt thereof, solely for the purposes contemplated by this chapter. [1939 c 93 § 8; RRS § 10007–208. Formerly RCW 74.36.080.]

2.50.090 Registration fees and private funds. For the purpose of promoting organized legal aid, the bar board is empowered to receive and disburse, at its discretion, a nominal registration fee (not in excess of fifty cents), which it may require of legal aid applicants, and also donations in any sum of private funds. [1939 c 93 § 9; RRS § 10007–209. Formerly RCW 74.36.090.]

2.50.100 Limitation of legal aid. No legal aid shall be rendered by or through any bureau as to any matter which, in the opinion of the director or the committee is not a proper subject of legal aid. No legal aid shall be given concerning matters relating to claims or litigation commonly handled on a contingent fee basis, nor to the defense of criminal charges in court. [1939 c 93 § 10; RRS § 10007–210. Formerly RCW 74.36.100.]

2.50.110 Attorneys' fees. No attorney's fee shall be charged to or received from any legal aid client as to any legal aid matter handled by or through the bureau. All attorneys' fees and court costs collected from any third party by the bureau in the name of any legal aid client shall become a part of the bureau's operation funds. [1939 c 93 § 11; RRS § 10007–211. Formerly RCW 74.36.110.]

2.50.120 County funds. The county board in its discretion shall allocate funds for the purposes of the bureau from county funds available for public assistance and relief received from the levy of three mills as provided in section 17, chapter 180, Laws of 1937. [1939 c 93 § 12; RRS § 10007–212. Formerly RCW 74.36.120.]

Reviser's note: 1937 c 180 § 17 was repealed by 1939 c 216 § 35.

2.50.125 Cities authorized to appropriate funds. A city of any class or any code city may appropriate funds in any amount for the purposes of this chapter. [1974 ex.s. c 5 § 1.]

2.50.130 Revocation of declaration of necessity. The county board is empowered to find by resolution the nonexistence of a necessity in such county for organized legal aid. Within ten days after the passage of such a resolution the county board shall cause a certified copy to be transmitted to the bar board. Upon receipt of a certified copy of such resolution the bar board is empowered and, within sixty days thereafter, is obligated to discontinue the legal aid bureau—unless it is subsequently maintained in the discretion of the bar board and financed by funds other than county funds. Nothing in this chapter shall prevent a county board from adopting successive resolutions declaring the existence or nonexistence of a necessity for organized legal aid, but no bureau actually created as a result of such a resolution shall be discontinued by a resolution of revocation within sixty days thereafter. [1939 c 93 § 13; RRS § 10007–213. Formerly RCW 74.36.130.]

2.50.140 Washington State Bar Association not restricted. No county funds shall be expended for legal aid except in accordance with this chapter, but nothing in this chapter shall limit the powers of the Washington State Bar Association, or its board of governors, to promote or render legal aid independent of county financial support. [1939 c 93 § 14; RRS § 10007–214. Formerly RCW 74.36.140.]

2.50.150 Certain other acts not applicable. The provisions of section 6 of chapter 180 of the Laws of 1937

shall not be applicable to a bureau or a committee as authorized by this chapter, or to the bar board or the Washington State Bar Association. [1939 c 93 § 15; RRS § 10007-215. Formerly RCW 74.36.150.]

Reviser's note: 1937 c 180 § 6 was repealed by 1939 c 216 § 35.

2.50.160 Chapter not exclusive—Counties authorized to provide legal aid. The provisions of this chapter are not exclusive. Nothing in this chapter shall be construed as placing a limitation on the establishment of alternative methods or systems for providing legal aid. Counties are hereby authorized to expend county funds for the establishment of such methods or systems of providing legal aid as shall be deemed in the public interest by the county legislative body. [1972 ex.s. c 109 § 1.]

Chapter 2.52 JUDICIAL COUNCIL

Sections

2.52.010	Council created—How constituted.
2.52.020	Terms—Vacancies.
2.52.030	Officers—Personnel.
2.52.035	Staff.
2.52.040	Meetings.
2.52.050	Duties.

2.52.010 Council created—How constituted. There is hereby established a judicial council which shall consist of the following:

- (1) The chief justice of the supreme court;
- (2) One judge of the court of appeals, to be selected and appointed by the three chief judges of the three divisions thereof;
- (3) One judge of the superior court, to be selected and appointed by the superior court judges' association;
- (4) Two members of the state senate who shall not be members of the same political party; two members of the state house of representatives who shall not be members of the same political party;
- (5) Four members of the bar who are practicing law, one of whom shall be either a public defender or a legal services attorney, and at least one of whom is a prosecuting attorney, with the public defender or legal services attorney, and two to be appointed by the board of governors of the Washington state bar association from a list of nominees submitted by the legislative committee of the Washington state bar association;
- (7) The attorney general; and
- (8) One judge from the courts of limited jurisdiction chosen by the Washington state magistrates' association. [1987 c 322 § 1; 1977 ex.s. c 112 § 1; 1973 c 18 § 1; 1971 c 40 § 1; 1967 c 124 § 1; 1961 c 271 § 1; 1955 c 40 § 1; 1925 ex.s. c 45 § 1; RRS § 10959-1.]

Association of superior court judges: Chapter 2.16 RCW.

2.52.020 Terms—Vacancies. The term of the member of the council who is a judge, a chairman of a judiciary committee of the legislature, or a prosecuting attorney shall be for the rest of his term in the office

that qualified him to become a member. The term of a member chosen from the bar, except the one who is a prosecuting attorney, shall be two years. A vacancy shall be filled for the rest of the term by appointment as in the first instance. [1925 ex.s. c 45 § 2; RRS § 10959-2.]

2.52.030 Officers—Personnel. The chief justice shall be chairman of the council, and one of the other members may be appointed by the council to be executive secretary. The council may make rules for its procedure and the conduct of its business, and may employ such clerical assistants and procure such office supplies as shall be necessary in the performance of its duties. [1987 c 322 § 2; 1925 ex.s. c 45 § 3; RRS § 10959-3.]

2.52.035 Staff. The administrator for the courts shall make available to the council such staff as necessary to carry out the work of the council. [1987 c 322 § 4.]

2.52.040 Meetings. One meeting of the council shall be held within the state each year. Other regular meetings may be provided for by rule. A special meeting may be held anywhere in the state at any time upon call by the chairman or five other members of the council and upon notice given to each member in time to enable him to attend. [1977 ex.s. c 112 § 2; 1925 ex.s. c 45 § 4; RRS § 10959-4.]

2.52.050 Duties. It shall be the duty of the council:

- (1) To receive recommendations from justices, judges, public officials, lawyers, and the public to amend current law, as those amendments may affect the administration of justice;
- (2) To consider such recommendations, and to examine the common law and statutes of the state and judicial decisions, and propose changes in current law, as those changes may affect the administration of justice;
- (3) To submit from time to time to the courts or the judges such suggestions as it may deem advisable for changes in rules, procedure, or methods of administration;
- (4) To report as may be necessary to the governor and the legislature with the council's recommendations as to needed changes in the organization of the judicial department or the courts or in judicial procedure; and
- (5) To assist the judges in giving effect to Art. 4, Section 25 of the state Constitution. [1987 c 322 § 3; 1981 c 260 § 1. Prior: 1977 ex.s. c 112 § 3; 1977 c 75 § 2; 1925 ex.s. c 45 § 5; RRS § 10959-5.]

Law revision commission: Chapter 1.30 RCW.

Chapter 2.56 ADMINISTRATOR FOR THE COURTS

Sections

2.56.010	Office created—Appointment, term, age qualification, salary.
2.56.020	Appointment, compensation of assistants—Administrator, assistants not to practice law.
2.56.030	Powers and duties.

- 2.56.035 Report on crime victims compensation assessments.
- 2.56.040 Distribution of work of courts—Duty of judges to comply with chief justice's direction—Salary withheld.
- 2.56.050 Judges, clerks, other officers, to comply with requests of administrator.
- 2.56.060 Annual conference of judges—Judge's expenses.
- 2.56.070 Holding court in another county—Reimbursement for expenses.
- 2.56.080 Chapter applies to supreme and superior courts, court of appeals, and courts of limited jurisdiction.
- 2.56.090 Disbursement of appropriated funds.
- 2.56.100 Penalty assessment in addition to penalty resulting from hearing under RCW 46.63.090 or 46.63.100—Paid into judiciary education account—Account created, purposes.
- 2.56.110 Driving while intoxicated, laws related to, enhanced enforcement—Assignment of visiting district judges—Powers, expenses.
- 2.56.120 Judicial impact notes—Establishment of procedure—Legislators may request—Copies to be filed.

2.56.010 Office created—Appointment, term, age qualification, salary. There shall be a state office to be known as the office of administrator for the courts who shall be appointed by the supreme court of this state from a list of five persons submitted by the governor of the state of Washington, and shall hold office at the pleasure of the appointing power. He shall not be over the age of sixty years at the time of his appointment. He shall receive a salary to be fixed by the supreme court. [1984 c 20 § 1; 1979 ex.s. c 255 § 7; 1974 ex.s. c 156 § 1; 1969 c 93 § 1; 1957 c 259 § 1.]

Effective date—1979 ex.s. c 255: See note following RCW 43.03.010.

2.56.020 Appointment, compensation of assistants—Administrator, assistants not to practice law. The administrator for the courts, with the approval of the chief justice of the supreme court of this state, shall appoint and fix the compensation of such assistants as are necessary to enable him to perform the power and duties vested in him. During his term of office or employment, neither the administrator nor any assistant shall engage directly or indirectly in the practice of law in this state. [1957 c 259 § 2.]

2.56.030 Powers and duties. The administrator for the courts shall, under the supervision and direction of chief justice:

- (1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;
- (2) Examine the state of the dockets of the courts and determine the need for assistance by any court;
- (3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;
- (4) Collect and compile statistical and other data and make reports of the business transacted by the courts

and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Formulate and submit to the judicial council of this state recommendations of policies for the improvement of the judicial system;

(10) Submit annually, as of February 1st, to the chief justice and the judicial council, a report of the activities of the administrator's office for the preceding calendar year;

(11) Administer programs and standards for the training and education of judicial personnel;

(12) Examine the need for new superior court and district judge positions under a weighted caseload analysis that takes into account the time required to hear all the cases in a particular court and the amount of time existing judges have available to hear cases in that court. The results of the weighted caseload analysis shall be reviewed by the board for judicial administration and the judicial council, both of which shall make recommendations to the legislature by January 1, 1989. It is the intent of the legislature that weighted caseload analysis become the basis for creating additional district court positions, and recommendations should address that objective; and

(13) Attend to such other matters as may be assigned by the supreme court of this state. [1987 c 363 § 6; 1981 c 132 § 1; 1957 c 259 § 3.]

2.56.035 Report on crime victims compensation assessments. Beginning in 1983, the administrator for the courts shall annually compile a report, covering the previous year, showing: (1) For each superior court district, the number of convictions and the amount of assessments paid and amount due for felonies, gross misdemeanors, and misdemeanors; (2) for each county, the number of gross misdemeanor and misdemeanor convictions in courts of limited jurisdiction and the amount of assessments paid and the amount due. This information shall be provided by class of crime (felony, gross misdemeanor, and misdemeanor). "Assessment" means the crime victims compensation assessment required under RCW 7.68.035. [1982 1st ex.s. c 8 § 6.]

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

2.56.040 Distribution of work of courts—Duty of judges to comply with chief justice's direction—Salary withheld. The chief justice shall consider all recommendations of the administrator for the assignment of judges, and, in his discretion, direct any judge whose calendar, in the judgment of the chief justice, will permit, to hold court in any county or district where need therefor exists, to the end that the courts of this state shall function with maximum efficiency, and that the work of other courts shall be equitably distributed. It shall be the duty of every judge to obey such direction of the chief justice unless excused by him for sufficient cause. No salary warrant shall be issued pursuant to RCW 2.08.100 until the judge who is to receive the same shall have made an affidavit, in the manner provided by law, that he has fully complied with the provisions of RCW 2.56.040 and 2.56.050. Said affidavit may be made a part of the affidavit required by RCW 2.08.100. [1957 c 259 § 4.]

Visiting judge: RCW 2.08.140 through 2.08.170, 2.08.200.

2.56.050 Judges, clerks, other officers, to comply with requests of administrator. The judges and clerks of the courts and all other officers, state and local, shall comply with all requests made by the administrator, after approval by the chief justice, for information and statistical data bearing on the state of the dockets of such courts and such other information as may reflect the business transacted by them and the expenditure of public moneys for the maintenance and operation of the judicial system. [1957 c 259 § 5.]

2.56.060 Annual conference of judges—Judge's expenses. The supreme court of this state may provide by rule or special order for the holding in this state of an annual conference of the judges of the courts of record of this state, judges of the courts of limited jurisdiction, and invited members of the bar, for the consideration of matters relating to judicial business, the improvement of the judicial system and the administration of justice. Each judge attending such annual judicial conference shall be entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, to be paid from state appropriations made for the purposes of this chapter. [1981 c 331 § 15; 1975-'76 2nd ex.s. c 34 § 6; 1957 c 259 § 6.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

2.56.070 Holding court in another county—Reimbursement for expenses. For attendance while holding court in another county or district pursuant to the direction of the chief justice, a judge shall be entitled to receive from the county to which he is sent reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended. [1981 c 186 § 4; 1957 c 259 § 7.]

2.56.080 Chapter applies to supreme and superior courts, court of appeals, and courts of limited jurisdiction. This chapter shall apply to the following courts: The supreme court, the court of appeals, the superior courts; and, when and to the extent so ordered by the supreme court, to the courts of limited jurisdiction of this state, including district courts. [1987 c 202 § 108; 1971 c 81 § 14; 1957 c 259 § 8.]

Intent—1987 c 202: See note following RCW 2.04.190.

2.56.090 Disbursement of appropriated funds. Any moneys appropriated for the purposes of this chapter shall be disbursed, upon order of the chief justice, on warrants drawn by the state auditor on the general fund. [1957 c 259 § 9.]

2.56.100 Penalty assessment in addition to penalty resulting from hearing under RCW 46.63.090 or 46.63.100—Paid into judiciary education account—Account created, purposes.

Reviser's note: RCW 2.56.100 was amended by 1985 c 57 § 1 without reference to its repeal by 1984 c 258 § 339, both effective July 1, 1985. It has been decodified for publication purposes pursuant to RCW 1.12.025.

2.56.110 Driving while intoxicated, laws related to, enhanced enforcement—Assignment of visiting district judges—Powers, expenses. The administrator for the courts may assign one or more district judges from other judicial districts to serve as visiting district judges in a judicial district which the administrator determines is experiencing an increase in case filings as the result of enhanced enforcement of laws related to driving, or being in physical control of, a motor vehicle while intoxicated. The prosecuting, city, or town attorney of the county, city, or town in which a judicial district lies, or the presiding judge of the judicial district, may request the administrator for the courts to designate the district as an enhanced enforcement district and to make assignments under this section. An assignment shall be for a specified period of time not to exceed thirty days. A visiting district judge has the same powers as a district judge of the district to which he or she is assigned. A visiting district judge shall be reimbursed for expenses under RCW 2.56.070. [1987 c 202 § 109; 1983 c 165 § 31.]

Intent—1987 c 202: See note following RCW 2.04.190.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Venue, criminal actions: RCW 3.66.070.

2.56.120 Judicial impact notes—Establishment of procedure—Legislators may request—Copies to be filed. (1) The office of the administrator for the courts, in cooperation with appropriate legislative committees and legislative staff, shall establish a procedure for the provision of judicial impact notes on the effect legislative bills will have on the workload and administration of the courts of this state. The administrator for the courts and the office of financial management shall coordinate the

development of judicial impact notes with the preparation of fiscal notes under chapters 43.88A and 43.132 RCW.

(2) The administrator for the courts shall provide a judicial impact note on any legislative proposal at the request of any legislator. The note shall be provided to the requesting legislator and copies filed with the appropriate legislative committees in accordance with subsection (3) of this section when the proposed legislation is introduced in either house.

(3) When a judicial impact note is prepared and approved by the administrator for the courts, copies of the note shall be filed with:

- (a) The chairperson of the committee to which the bill was referred upon introduction in the house of origin;
- (b) The senate committee on ways and means;
- (c) The house of representatives committee on ways and means;
- (d) The senate judiciary committee;
- (e) The house of representatives judiciary committee; and
- (f) The office of financial management.

(4) This section shall not prevent either house of the legislature from acting on any bill before it as otherwise provided by the state Constitution, by law, and by the rules and joint rules of the senate and house of representatives, nor shall the lack of any judicial impact note as provided in this section or any error in the accuracy thereof affect the validity of any measure otherwise duly passed by the legislature. [1986 c 158 § 1; 1984 c 258 § 604.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 2.60

FEDERAL COURT LOCAL LAW CERTIFICATE PROCEDURE ACT

Sections	
2.60.010	Definitions.
2.60.020	Federal court certification of local law question.
2.60.030	Practice and procedure.
2.60.900	Short title.

2.60.010 Definitions. As used in this chapter:

- (1) The term "certificate procedure" shall mean the procedure authorized herein by which a federal court in disposing of a cause pending before it submits a question of local law to the supreme court for answer;
- (2) The term "federal court" means any court of the United States of America including the supreme court of the United States, courts of appeal, district courts and any other court created by act of congress;
- (3) The term "supreme court" shall mean supreme court of Washington;
- (4) The term "record" shall mean: (a) A stipulation of facts approved by the federal court showing the nature of the case and the circumstances out of which the question of law arises or such part of the pleadings, proceedings and testimony in the cause pending before the federal court as in its opinion is necessary to enable the

supreme court to answer the question submitted; (b) a statement of the question of local law certified for answer. The record shall contain a certificate under the official seal of the court, signed by the chief judge of a multi-judge federal court or judge of the district court utilizing certificate procedure stating that the record contains all matters in the pending cause deemed material for consideration of the local law question certified for answer;

(5) The term "supplemental record" shall mean the original or copies of any other portion of the proceedings, pleadings and testimony before the federal court deemed desirable by the supreme court in the determination of the local law question certified for answer. The supplemental record shall contain a certificate under the official seal of the court signed by the chief judge of such multi-judge federal court or judge of the district court, certifying that the supplemental record contains all additional matters requested;

(6) The term "opinion" shall mean the written opinion of the supreme court of Washington and shall include the certificate of the clerk of such court under seal of court stating that the opinion is in answer to the local law question submitted. [1965 c 99 § 1.]

2.60.020 Federal court certification of local law question. When in the opinion of any federal court before whom a proceeding is pending, it is necessary to ascertain the local law of this state in order to dispose of such proceeding and the local law has not been clearly determined, such federal court may certify to the supreme court for answer the question of local law involved and the supreme court shall render its opinion in answer thereto. [1965 c 99 § 2.]

2.60.030 Practice and procedure. Certificate procedure shall be governed by the following provisions:

- (1) Certificate procedure may be invoked by a federal court upon its own motion or upon the motion of any interested party in the litigation involved if the federal court grants such motion.
- (2) Certificate procedure shall include and be based upon the record and may include a supplemental record.
- (3) Certificate procedure costs shall be equally divided between plaintiff and defendant, subject to reallocation as between or among the parties by the federal court involved.
- (4) The appellant or moving party in the federal court shall file and serve upon its adversary its brief on the question certified within thirty days after the filing of the record in the supreme court. The appellee or responding party in the federal court shall file and serve upon its adversary its brief within twenty days after receipt of appellant's or moving party's brief and a reply brief shall be filed within ten days. Time for filing record, supplemental record or briefs may be extended for cause.
- (5) Oral argument as in other causes on the merits may be had upon request of the supreme court or upon application of any interested party in the certificate procedure.

(6) The supreme court shall forward to the federal court utilizing certificate procedure its opinion answering the local law question submitted.

(7) The supreme court may adopt rules of practice and procedure to implement or otherwise facilitate utilization of certificate procedure. [1965 c 99 § 3.]

2.60.900 Short title. This act may be cited as the "Federal court local law certificate procedure act." [1965 c 99 § 4.]

Chapter 2.64

COMMISSION ON JUDICIAL CONDUCT

Sections

2.64.010	Definitions—Application.
2.64.020	Membership—Terms.
2.64.030	Disqualification—Vacancies—Limitations on terms—Alternates—Removal.
2.64.040	Compensation and travel expenses.
2.64.050	Employment of personnel—Expenditures authorized.
2.64.060	Administration of oaths—Powers as to witnesses, papers, books, etc.—Subpoenas.
2.64.070	Refusal to obey subpoena—Powers of superior court.
2.64.080	Privilege from suit.
2.64.091	Publication of rules—Filing.
2.64.094	Suspension of judge or justice.
2.64.100	Proposed operating budgets—Reports to legislature.
2.64.110	Exemption from public disclosure—Waiver—Confidentiality of proceedings—Fact-finding hearings open to public—Penalty for disclosure.
2.64.120	Independent part of judicial branch.
2.64.910	Severability—1981 c 268.

Rules of court: See *Discipline Rules for Judges (DRJ)*.

2.64.010 Definitions—Application. For purposes of this chapter, "commission" means the commission on judicial conduct provided for in Article IV, section 31 of the state Constitution, which is authorized to recommend to the supreme court, after notice and hearing, the censure, suspension or removal of a judge or justice for violating a rule of judicial conduct, or the retirement of a judge or justice for disability which is permanent, or likely to become permanent, and which seriously interferes with the performance of judicial duties. For purposes of this chapter, the term "judge or justice" includes justices of the supreme court, judges of the court of appeals, judges of the superior courts, judges of any court organized under Titles 3 or 35 RCW, judges pro tempore, court commissioners, and magistrates. This chapter shall apply to any judge or justice, regardless of whether the judge or justice serves full time or part time, and regardless of whether the judge or justice is admitted to practice law in this state. [1987 c 186 § 1; 1981 c 268 § 2.]

2.64.020 Membership—Terms. The commission shall consist of nine members. One member shall be a judge selected by and from the court of appeals judges; one member shall be a judge selected by and from the superior court judges; one member shall be a judge selected by and from the district court judges; two members shall be selected by the state bar association and be admitted to the practice of law in this state; and four

members shall be nonlawyers appointed by the governor and confirmed by the senate. The term of each member of the commission shall be four years. [1987 c 186 § 2; 1981 c 268 § 3.]

Terms of additional members—1987 c 186 § 2: "Notwithstanding RCW 2.64.020, the initial term of one of the members added to the commission on judicial conduct by section 2, chapter 186, Laws of 1987 shall end on June 16, 1990, and the term of the other member shall end on June 16, 1991, as determined by lot." [1987 c 186 § 3.]

2.64.030 Disqualification—Vacancies—Limitations on terms—Alternates—Removal. Commission membership shall terminate if a member ceases to hold the position that qualified him or her for appointment. Vacancies caused by disqualification or resignation shall be filled by the appointing authority for the remainder of the term. No person may serve more than two consecutive four-year terms. A person may be reappointed after a lapse of one year. A member, rather than his or her successor, shall continue to participate in any hearing in progress at the end of his or her term, or when the member ceases to hold the position that qualified him or her for appointment. The appointing authority shall appoint an alternate to serve during a member's temporary disability, disqualification, or inability to serve. No member may otherwise be removed from the commission before the end of his or her term except upon good cause found by the appointing authority. [1981 c 268 § 4.]

2.64.040 Compensation and travel expenses. Commission members and alternate members shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1984 c 287 § 8; 1981 c 268 § 5.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

2.64.050 Employment of personnel—Expenditures authorized. The commission may employ any personnel, including lawyers, and make any other expenditures necessary for the effective performance of its duties and the exercise of its powers. Commission employees shall be exempt from the civil service law, chapter 41.06 RCW. [1981 c 268 § 6.]

2.64.060 Administration of oaths—Powers as to witnesses, papers, books, etc.—Subpoenas. Each member of the commission, and any special master appointed by the commission, may administer oaths. The commission may summon and examine witnesses and compel the production and examination of papers, books, accounts, documents, records, certificates, and other evidence for the determination of any issue before or the discharge of any duty of the commission. The commission shall also issue subpoenas at the request and on behalf of any judge or justice under inquiry. All subpoenas shall be signed by a member of the commission or a special master appointed by the commission. Subpoenas shall be served and witnesses reimbursed in the manner provided in civil cases in superior court. [1981 c 268 § 7.]

2.64.070 Refusal to obey subpoena—Powers of superior court. If a person refuses to obey a subpoena issued by the commission or refuses to answer any proper question during a hearing or proceeding, the superior court of any county in which the hearing or proceeding is conducted or in which the person resides or is found shall have jurisdiction, upon application by the commission, to order the person to appear before the commission, to produce evidence if so ordered, or to give testimony concerning the matter under investigation. Failure to obey the order of the court may be punished as contempt. [1981 c 268 § 8.]

2.64.080 Privilege from suit. Members and employees of the commission, including any lawyers or special masters temporarily employed by the commission, are absolutely privileged from suit in any action, civil or criminal, based upon any disciplinary proceedings or upon other official acts as members or employees of the commission. Statements made to the commission or its investigators or other employees are absolutely privileged in actions for defamation. This absolute privilege does not apply to statements made in any other forum. [1981 c 268 § 9.]

2.64.091 Publication of rules—Filing. The commission shall submit proposed and adopted rules for publication in the Washington state register pursuant to RCW 34.08.020. Adopted rules shall be provided to the code reviser for publication with the Revised Code of Washington where rules of court are published and to the reporter of decisions for publication in the official codification of Washington court rules. The proposed and adopted rules shall also be filed with the administrator for the courts for distribution in accordance with supreme court rule. [1987 c 186 § 4.]

2.64.094 Suspension of judge or justice. If the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended, with salary, from his or her judicial position upon filing of the recommendation with the supreme court and until a final determination is made by the supreme court. [1987 c 186 § 6.]

2.64.100 Proposed operating budgets—Reports to legislature. The commission shall prepare and present to the legislature proposed operating budgets for the commission in accordance with the provisions of chapter 43.88 RCW. The commission shall report to the legislature in the manner required by law, with due regard for the confidentiality of proceedings before the commission. [1981 c 268 § 11.]

2.64.110 Exemption from public disclosure—Waiver—Confidentiality of proceedings—Fact-finding hearings open to public—Penalty for disclosure. All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled or obtained during the course of an investigation, are exempt from the public disclosure

requirements of chapter 42.17 RCW. However, a judge or justice may waive confidentiality of the fact that a complaint is being investigated. The commission shall establish rules for the confidentiality of its proceedings with due regard for the privacy interests of judges or justices who are the subject of an inquiry and the protection of persons who file complaints with the commission. Any fact-finding hearing conducted by the commission, a subcommittee of the commission, or a master appointed by the commission shall be open to the public. Any person giving information to the commission or its employees, any member of the commission, or any person employed by the commission is subject to a proceeding for contempt in superior court for disclosing information in violation of a commission rule. [1987 c 186 § 5; 1981 c 268 § 12.]

2.64.120 Independent part of judicial branch. The commission shall for all purposes be considered an independent part of the judicial branch of government. [1981 c 268 § 13.]

2.64.910 Severability—1981 c 268. 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. [1981 c 268 § 17.]

Title 3

DISTRICT COURTS—COURTS OF LIMITED JURISDICTION

(Formerly: Justice Courts—Courts of Limited Jurisdiction)

Chapters

- 3.02** Courts of limited jurisdiction.
- 3.20** Jurisdiction and venue.
- 3.30** District courts.
- 3.34** District judges.
- 3.38** District court districts.
- 3.42** District court commissioners.
- 3.46** Municipal departments.
- 3.50** Municipal departments—Alternate provision.
- 3.54** Clerks and deputy clerks.
- 3.58** Salaries and expenses.
- 3.62** Income of court.
- 3.66** Jurisdiction and venue.
- 3.70** Magistrates' association.
- 3.74** Miscellaneous.

Rules of court: Rules for Courts of Limited Jurisdiction—See Rules of Court, Part V.

District courts—Civil procedure: Title 12 RCW.

Justice or constable levying demand or promising reward: RCW 9.12.020.

Municipal courts, cities, over four hundred thousand: Chapter 35.20 RCW.

Persons convicted in district court may be placed under supervision of county probation officer: RCW 9.92.060, 9.95.210.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Chapter 3.02

COURTS OF LIMITED JURISDICTION

Sections

- 3.02.010 Court of limited jurisdiction defined.
- 3.02.020 Review of proceedings.
- 3.02.030 Record of proceedings.
- 3.02.040 Electronic recording equipment.
- 3.02.045 Use of collection agencies and attorneys to collect unpaid amounts—Credit card use—Assessment of amounts paid for collection as court costs.
- 3.02.050 Rules for discovery in civil cases.

3.02.010 Court of limited jurisdiction defined. For purposes of this chapter, a court of limited jurisdiction is any court organized under Titles 3, 35, or 35A RCW. [1980 c 162 § 1.]

Effective dates, savings—1980 c 162: "Sections 1 through 4 of this 1980 act shall take effect on January 1, 1981, and shall apply to civil or criminal actions commenced on or after January 1, 1981. Sections 8 and 9 of this 1980 act shall take effect on May 1, 1980." [1980 c 162 § 13.] "Sections 1 through 4 of this 1980 act" are codified as RCW 3.02.010 through 3.02.040. "Sections 8 and 9 of this 1980 act" are the 1980 c 162 amendments to RCW 3.58.010 and 3.62.060, respectively.

Severability—1980 c 162: "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." [1980 c 162 § 12.]

3.02.020 Review of proceedings. Review of the proceedings in a court of limited jurisdiction shall be by the superior court, the procedure for which may be established by supreme court rule. [1980 c 162 § 2.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.02.030 Record of proceedings. The supreme court may, by court rule, establish a method of making a record of the proceedings of a court of limited jurisdiction for purposes of review. [1980 c 162 § 3.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.02.040 Electronic recording equipment. The administrator for the courts shall supervise the selection, installation, and operation of any electronic recording equipment in courts of limited jurisdiction. [1980 c 162 § 4.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.02.045 Use of collection agencies and attorneys to collect unpaid amounts—Credit card use—Assessment of amounts paid for collection as court costs. (1) Courts of limited jurisdiction may use collection agencies under chapter 19.16 RCW for purposes of collecting unpaid penalties on infractions, criminal fines, costs, assessments, civil judgments, or forfeitures that have been imposed by the courts. Courts of limited jurisdiction may enter into agreements with one or more attorneys or collection agencies for collection of outstanding penalties, fines, costs, assessments, and forfeitures. These agreements may specify the scope of work, remuneration for services, and other charges deemed appropriate.

(2) Courts of limited jurisdiction may use credit cards for purposes of billing and collecting unpaid penalties, fines, costs, assessments, and forfeitures so imposed. Courts of limited jurisdiction may enter into agreements with one or more financial institutions for the purpose of the collection of penalties, fines, costs, assessments, and forfeitures. The agreements may specify conditions, remuneration for services, and other charges deemed appropriate.

(3) Servicing of delinquencies by collection agencies or by collecting attorneys in which the court retains control of its delinquencies shall not constitute assignment of debt.

(4) For purposes of this section, the term debt shall include penalties, fines, costs, assessments, or forfeitures imposed by the courts.

(5) The court may assess as court costs the moneys paid for remuneration for services or charges paid to collecting attorneys, to collection agencies, or, in the case of credit cards, to financial institutions. [1987 c 266 § 1.]

3.02.050 Rules for discovery in civil cases. By January 1, 1982, the supreme court shall adopt rules providing for discovery in civil cases in the courts of limited jurisdiction. [1981 c 331 § 8.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Chapter 3.20 JURISDICTION AND VENUE

Sections

3.20.100 Change of venue—Affidavit of prejudice.

District courts, civil procedure: Title 12 RCW.

Venue as to motor vehicle violations: RCW 46.52.100.

3.20.100 Change of venue—Affidavit of prejudice. If, previous to the commencement of any trial before a justice of the peace, the defendant, his attorney or agent, shall make and file with the justice an affidavit that the deponent believes that the defendant cannot have an impartial trial before such justice, it shall be the duty of the justice to forthwith transmit all papers and documents belonging to the case to the next nearest justice of the peace in the same county, who is not of kin to either party, sick, absent from the county, or interested in the result of the action, either as counsel or otherwise. The justice to whom such papers and documents are so transmitted shall proceed as if the suit had been instituted before him. Distance, as contemplated by this section, shall mean to be by the nearest traveled route. The costs of such change of venue shall abide the result of the suit. In precincts, and incorporated cities and towns where there are two or more justices of the peace, any one of them shall be considered the next nearest justice of the peace. [1943 c 126 § 1; 1881 p 8 §§ 2, 3; Code 1881 § 1938; 1867 p 88 § 2; Rem. Supp. 1943 § 1774.]

Chapter 3.30 DISTRICT COURTS (Formerly: Justice courts)

Sections

3.30.010 Definitions.
3.30.015 Construction of "justices of the peace," "justice courts," "justice of the peace courts."
3.30.020 Application of chapters 3.30 through 3.74 RCW.
3.30.030 Nomenclature for judges and courts.
3.30.040 Sessions.
3.30.050 Departments.
3.30.060 Adjournments.
3.30.070 Records.
3.30.080 Rules.

3.30.090 Violations bureau.

Rules of court: See Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).

County probation services for persons convicted in district court: RCW 9.92.060, 9.95.210, 36.01.070.

3.30.010 Definitions. As used in this chapter unless the context clearly requires otherwise:

"City" means an incorporated city or town.

"Department" means an administrative unit of a district court established for the orderly and efficient administration of business and may include, without being limited in scope thereby, a unit or units for determining traffic cases, violations of city ordinances, violations of state law, criminal cases, civil cases, or jury cases.

"Population" means the latest population of the judicial district of each county as estimated and certified by the office of financial management. The office of financial management, on or before May 1, 1970 and on or before May 1st each four years thereafter, shall estimate and certify to the county legislative authority the population of each judicial district of each county. [1984 c 258 § 3; 1979 c 151 § 1; 1967 ex.s. c 42 § 1; 1961 c 299 § 1.]

Court Improvement Act of 1984—Effective dates—1984 c 258: "(1) Sections 1 through 210, 511, 601 through 808, and 901 of this act shall take effect on July 1, 1984.

(2) Sections 501 through 510 and 512 through 524 of this act shall take effect on January 1, 1985.

(3) Sections 301 through 405 of this act shall take effect on July 1, 1985." [1984 c 258 § 902.] For codification of 1984 c 258, see Codification Tables, Volume 0.

Court Improvement Act of 1984—Severability—1984 c 258: "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." [1984 c 258 § 903.]

Short title—1984 c 258: "This act may be known and cited as the court improvement act of 1984." [1984 c 258 § 1.]

Saving—1967 ex.s. c 42: "All matters relating to functions transferred under the provisions of this 1967 amendatory act which at the time of transfer have not been completed may be undertaken and completed by the director of the planning and community affairs agency, who is authorized, empowered, and directed to promulgate any and all orders, rules and regulations necessary to accomplish this purpose." [1967 ex.s. c 42 § 4.] The planning and community affairs agency has been redesignated the department of community development. See RCW 43.63A.045.

Effective date—1967 ex.s. c 42: "This 1967 amendatory act shall take effect on July 1, 1967." [1967 ex.s. c 42 § 5.]

Population determinations, office of financial management: Chapter 43.62 RCW.

3.30.015 Construction of "justices of the peace," "justice courts," "justice of the peace courts." All references to justices of the peace in other titles of the Revised Code of Washington shall be construed as meaning district judges. All references to justice courts or justice of the peace courts in other titles of the Revised Code of Washington shall be construed as meaning district courts. [1984 c 258 § 90.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.020 Application of chapters 3.30 through 3.74 RCW. The provisions of chapters 3.30 through 3.74

RCW shall apply to class AA and class A counties: *Provided*, That any city having a population of more than five hundred thousand may by resolution of its legislative body elect to continue to operate a municipal court pursuant to the provisions of chapter 35.20 RCW, as if chapters 3.30 through 3.74 RCW had never been enacted: *Provided further*, That if a city elects to continue its municipal court pursuant to this section, the number of district judges allocated to the county in RCW 3.34.010 shall be reduced by two and the number of full time district judges allocated by RCW 3.34.020 to the district in which the city is situated shall also be reduced by two. The provisions of chapters 3.30 through 3.74 RCW may be made applicable to any county of the first, second, third, fourth, fifth, sixth, seventh, eighth, or ninth class upon a majority vote of its board of county commissioners. [1987 c 202 § 110; 1961 c 299 § 2.]

Intent—1987 c 202: See note following RCW 2.04.190.

Municipal courts in cities of over four hundred thousand: Chapter 35.20 RCW.

3.30.030 Nomenclature for judges and courts. The judges of each district court district shall be the justices of the peace of the district elected or appointed as provided in chapters 3.30 through 3.74 RCW. Such courts shall alternately be referred to as district courts and the judges thereof as district judges. [1984 c 258 § 4; 1971 c 73 § 1; 1961 c 299 § 3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.040 Sessions. The district courts shall be open except on nonjudicial days. Sessions of the court shall be held at such places as shall be provided by the district court districting plan. The court shall sit as often as business requires in each city of the district which provides suitable courtroom facilities, to hear causes in which such city is the plaintiff. [1984 c 258 § 5; 1961 c 299 § 4.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.050 Departments. Each court may be organized in a manner consistent with the departments created by the districting plan. [1984 c 258 § 6; 1971 c 73 § 2; 1961 c 299 § 5.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.060 Adjournments. Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. [1961 c 299 § 6.]

3.30.070 Records. The clerk of each district court shall keep uniform records of each case filed and the proceedings had therein including an accounting for all funds received and disbursed. Financial reporting shall be in such form as may be prescribed by the office of the state auditor, division of municipal corporations. The

form of other records may be prescribed by the supreme court. [1971 c 73 § 3; 1961 c 299 § 7.]

3.30.080 Rules. The supreme court may adopt rules of procedure for district courts. A district court may adopt local rules of procedure which are not inconsistent with state law or with the rules adopted by the supreme court. If the rules of the supreme court authorized under this section are adopted, all procedural laws in conflict with the rules shall be of no effect. [1984 c 258 § 7; 1961 c 299 § 8.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.30.090 Violations bureau. A violations bureau may be established by any city or district court having jurisdiction of traffic cases to assist in processing traffic cases. As designated by written order of the court having jurisdiction of traffic cases, specific offenses under city ordinance, county resolution, or state law may be processed by such bureau. Such bureau may be authorized to receive the posting of bail for such specified offenses, and, as authorized by the court order, to accept forfeiture of bail and payment of monetary penalties. The court order shall specify the amount of bail to be posted and shall also specify the circumstances or conditions which will require an appearance before the court. Such bureau, upon accepting the prescribed bail, shall issue a receipt to the alleged violator, which receipt shall bear a legend informing him of the legal consequences of bail forfeiture. The bureau shall transfer daily to the clerk of the proper department of the court all bail posted for offenses where forfeiture is not authorized by the court order, as well as copies of all receipts. All forfeitures or penalties paid to a violations bureau for violations of municipal ordinances shall be placed in the city general fund or such other fund as may be prescribed by ordinance. All forfeitures or penalties paid to a violations bureau for violations of state laws or county resolutions shall be remitted at least monthly to the county treasurer for deposit in the current expense fund. Employees of violations bureaus of a city shall be city employees under any applicable municipal civil service system. [1979 ex.s. c 136 § 15; 1971 c 73 § 4; 1961 c 299 § 9.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Chapter 3.34

DISTRICT JUDGES

(Formerly: Justices of the peace)

Sections

3.34.010	District judges—Number for each county.
3.34.020	District judges—Number of full time.
3.34.030	Reallocation of number of district judges.
3.34.040	District judges—Full time—Other.
3.34.050	District judges—Election.
3.34.060	District judges—Eligibility and qualifications.
3.34.070	District judges—Term of office.
3.34.080	Oath—District judges—Court commissioners.
3.34.090	Bonds—Insurance as reimbursable expense.
3.34.100	District judges—Vacancies.

- 3.34.110 District judges—Disqualification.
 3.34.120 District judges—Disqualification of partners.
 3.34.130 District judges pro tempore—Reduction in salary of judges replaced—Exception—Reimbursement of counties.
 3.34.140 Exchange of district judges—Reimbursement for expenses.
 3.34.150 Presiding judge.

3.34.010 District judges—Number for each county. The number of district judges to be elected in each county shall be: Adams, three; Asotin, one; Benton, two; Chelan, one; Clallam, one; Clark, four; Columbia, one; Cowlitz, two; Douglas, one; Ferry, two; Franklin, one; Garfield, one; Grant, one; Grays Harbor, two; Island, three; Jefferson, one; King, twenty; Kitsap, two; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, three; Pend Oreille, two; Pierce, eight; San Juan, one; Skagit, three; Skamania, one; Snohomish, eight; Spokane, eight; Stevens, two; Thurston, one; Wahkiakum, one; Walla Walla, three; Whatcom, two; Whitman, two; Yakima, six: *Provided*, That this number may be increased in accordance with a resolution of the county commissioners under RCW 3.34.020. [1987 c 202 § 111; 1975 1st ex.s. c 153 § 1; 1973 1st ex.s. c 14 § 1; 1971 ex.s. c 147 § 1; 1970 ex.s. c 23 § 1; 1969 ex.s. c 66 § 1; 1965 ex.s. c 110 § 5; 1961 c 299 § 10.]

Intent—1987 c 202: See note following RCW 2.04.190.

3.34.020 District judges—Number of full time. In each district having a population of forty thousand or more but less than sixty thousand, there shall be elected one full time district judge; in each district having a population of sixty thousand but less than one hundred twenty-five thousand, there shall be elected two full time judges; in each district having a population of one hundred twenty-five thousand but less than two hundred thousand, there shall be elected three full time judges; and in each district having a population of two hundred thousand or more there shall be elected one additional full time judge for each additional one hundred thousand persons or fraction thereof. If a district having one or more full time judges should change in population, for reasons other than change in district boundaries, sufficiently to require a change in the number of judges previously authorized to it, the change shall be made by the county legislative authority without regard to RCW 3.34.010 as now or hereafter amended and shall become effective on the second Monday of January of the year following. Upon any redistricting of the county thereafter the number of judges in the county shall be designated under RCW 3.34.010. In a district having a population of one hundred twenty thousand people or more adjoining a metropolitan county of another state which has a population in excess of five hundred thousand, there shall be one full time judge in addition to the number otherwise allowed by this section and without regard to RCW 3.34.030 or resolution of the county legislative authority. The county legislative authority may by resolution make a part time position a full time

office. The county legislative authority may by resolution provide for the election of one full time judge in addition to the number of full time judges authorized. [1987 c 202 § 112; 1984 c 258 § 8; 1982 c 29 § 1; 1973 1st ex.s. c 14 § 2; 1970 ex.s. c 23 § 2; 1969 ex.s. c 66 § 7; 1961 c 299 § 11.]

Intent—1987 c 202: See note following RCW 2.04.190.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.030 Reallocation of number of district judges. Notwithstanding the limitations of RCW 3.34.010 and 3.34.020 in any district having more than one district judge, if any city or town elects to select under the provisions of chapter 3.50 RCW a person other than a district judge to serve as municipal judge, the county legislative authority may reduce the number of district judges required for the county and district by one for each one hundred and fifty thousand persons or fraction thereof residing in all such municipalities, electing to select a municipal judge who is not also a district judge: *Provided*, That in no case shall the number of district judges in any county be less than one for each one hundred thousand persons or major fraction thereof in such county, nor shall the number of district judges in any district be less than one for each one hundred and fifty thousand persons or major fraction thereof. [1987 c 202 § 113; 1984 c 258 § 9; 1969 ex.s. c 66 § 2; 1961 c 299 § 12.]

Intent—1987 c 202: See note following RCW 2.04.190.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.040 District judges—Full time—Other. A district judge serving a district having a population of forty thousand or more persons, and a district judge receiving a salary greater than the maximum salary provided in RCW 3.58.020(6) shall be deemed full time judges and shall devote all of their time to the office and shall not engage in the practice of law. Other judges shall devote sufficient time to the office to properly fulfill the duties thereof and may engage in other occupations but shall maintain a separate office for private business and shall not use for private business the services of any clerk or secretary paid for by the county or office space or supplies furnished by the judicial district. [1984 c 258 § 10; 1983 c 195 § 1; 1974 ex.s. c 95 § 2; 1971 ex.s. c 147 § 2; 1961 c 299 § 13.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.050 District judges—Election. At the general election in November, 1962 and quadrennially thereafter, there shall be elected by the voters of each district court district the number of judges authorized for the district by the district court districting plan. Judges shall be elected for each district by the qualified electors of the district in the same manner as judges of courts of record are elected. Not less than ten days before the time for filing declarations of candidacy for the election of judges for districts entitled to more than one judge,

the county auditor shall designate each such office of district judge to be filled by a number, commencing with the number one and numbering the remaining offices consecutively. At the time of the filing of the declaration of candidacy, each candidate shall designate by number which one, and only one, of the numbered offices for which he or she is a candidate and the name of the candidate shall appear on the ballot for only the numbered office for which the candidate filed a declaration of candidacy. [1984 c 258 § 11; 1975-'76 2nd ex.s. c 120 § 8; 1961 c 299 § 14.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Severability—1975-'76 2nd ex.s. c 120: See note following RCW 29.21.010.

3.34.060 District judges—Eligibility and qualifications. To be eligible to file a declaration of candidacy for and to serve as a district court judge, a person must:

(1) Be a registered voter of the district court district; and

(2) Be either:

(a) A lawyer admitted to practice law in the state of Washington; or

(b) A person who has been elected and has served as a justice of the peace, district judge, municipal judge, or police judge in Washington; or

(c) In those districts having a population of less than ten thousand persons, a person who has taken and passed the qualifying examination for the office of district judge as shall be provided by rule of the supreme court. [1984 c 258 § 12; 1961 c 299 § 15.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.070 District judges—Term of office. Every district judge shall hold office for a term of four years from and after the second Monday in January next succeeding his or her selection and continuing until a successor is elected and qualified. [1984 c 258 § 13; 1961 c 299 § 16.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.080 Oath—District judges—Court commissioners. Each district judge, district judge pro tempore and district court commissioner shall, before entering upon the duties of office, take an oath to support the Constitution of the United States and the Constitution and laws of the state of Washington, and to perform the duties of the office faithfully and impartially and to the best of his or her ability. [1984 c 258 § 14; 1961 c 299 § 17.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.090 Bonds—Insurance as reimbursable expense. The county legislative authority shall provide for the bonding of each district judge, district judge pro tempore, district court commissioner, clerk of the district court, and court employee, at the expense of the county,

in such amount as the county legislative authority shall prescribe, conditioned that each such person will pay over according to law all moneys which shall come into the person's custody in causes filed in the district court. Such bond shall not be less than the maximum amount of money liable to be under the control, at any one time, of each such person in the performance of his or her duties. Such bond may be a blanket bond. If the county obtains errors and omissions insurance covering district court personnel, the costs of such coverage shall be a reimbursable expense pursuant to RCW 3.62.050 as now or hereafter amended. [1984 c 258 § 15; 1971 c 73 § 5; 1961 c 299 § 18.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.100 District judges—Vacancies. If a district judge dies, resigns, is convicted of a felony, ceases to reside in the district, fails to serve for any reason except temporary disability, or if his or her term of office is terminated in any other manner, the office shall be deemed vacant. The county legislative authority shall fill all vacancies by appointment and the judge thus appointed shall hold office until the next general election and until a successor is elected and qualified. District judges shall be granted sick leave in the same manner as other county employees. [1984 c 258 § 16; 1961 c 299 § 19.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.110 District judges—Disqualification. A district judge shall not act as judge in any of the following cases:

(1) In an action to which the judge is a party, or in which the judge is directly interested, or in which the judge has been an attorney for a party.

(2) When the judge or one of the parties believes that the parties cannot have an impartial trial before the judge. Only one change of judges shall be allowed each party under this subsection.

When a judge is disqualified under this section, the case shall be heard before another judge or judge pro tempore of the same county. [1984 c 258 § 17; 1961 c 299 § 20.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.120 District judges—Disqualification of partners. The partner and associates of a judge who is a lawyer shall not practice law before the judge. [1984 c 258 § 18; 1961 c 299 § 21.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.130 District judges pro tempore—Reduction in salary of judges replaced—Exception—Reimbursement of counties. (1) Each district court shall designate one or more persons as judge pro tempore who shall serve during the temporary absence, disqualification, or incapacity of a district judge. The qualifications

of a judge pro tempore shall be the same as for a district judge, except that with respect to RCW 3.34.060(1), the person appointed need only be a registered voter of the state. A judge pro tempore may sit in any district of the county for which he or she is appointed. A judge pro tempore shall be paid the salary authorized by the county legislative authority. For each day that a judge pro tempore serves in excess of thirty days during any calendar year, the annual salary of the judge in whose place he or she serves shall be reduced by an amount equal to one-two hundred fiftieth of such salary: *Provided*, That each full time district judge shall have up to fifteen days annual leave without reduction for service on judicial commissions established by the legislature or the chief justice of the supreme court. No reduction in salary shall occur when a judge pro tempore serves while a district judge is using sick leave granted in accordance with RCW 3.34.100.

(2) The legislature may appropriate money for the purpose of reimbursing counties for the salaries of judges pro tempore for certain days in excess of thirty worked per year that the judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (1) of this section. No later than September 1 of each year, each county treasurer shall certify to the administrator for the courts for the year ending the preceding June 30, the number of days in excess of thirty that any judge pro tempore was required to work as the result of service by a judge on a commission as authorized under subsection (1) of this section. Upon receipt of the certification, the administrator for the courts shall reimburse the county from money appropriated for that purpose. [1986 c 161 § 4; 1984 c 258 § 302; 1984 c 258 § 19; 1983 c 195 § 2; 1981 c 331 § 9; 1961 c 299 § 22.]

Severability—1986 c 161: See note following RCW 43.03.010.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

3.34.140 Exchange of district judges—Reimbursement for expenses. Any district judge may hold a session in any district in the state, at the request of the judge or majority of judges in the district if the visiting judge determines that the state of business in his or her district allows the judge to be absent. The county legislative authority in which the district court is located shall first approve the temporary absence and the judge pro tempore shall not be required to serve during the judge's absence. A visiting judge shall be entitled to reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended while so acting, to be paid by the visited district. These expenses shall not be paid to the visiting judge unless the legislative authority of the county in which the visited district is located has approved the payment before the visit. [1984 c 258 § 20; 1981 c 186 § 5; 1961 c 299 § 23.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.34.150 Presiding judge. If a district has more than one judge, the supreme court may by rule provide for the manner of selection of one of the judges to serve as presiding judge and prescribe the presiding judge's duties. [1984 c 258 § 21; 1961 c 299 § 24.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 3.38

DISTRICT COURT DISTRICTS

(Formerly: Justice court districts)

Sections

3.38.010	Districting committee—Membership.
3.38.020	Districting committee—Duties—Districting plan.
3.38.022	Location of offices and courtrooms.
3.38.030	Districting plan—Adoption.
3.38.031	Districting plan—Transitional provisions.
3.38.040	Districting plan—Amendment.
3.38.050	District court districts—Standards.
3.38.060	Joint district court districts.

3.38.010 Districting committee—Membership. There is established in each county a district court districting committee composed of the following:

(1) The judge of the superior court, or, if there be more than one such judge, then one of the judges selected by that court;

(2) The prosecuting attorney, or a deputy selected by the prosecuting attorney;

(3) A practicing lawyer of the county selected by the president of the largest local bar association, if there be one, and if not, then by the county legislative authority;

(4) A judge of a court of limited jurisdiction in the county selected by the president of the Washington state magistrates' association; and

(5) The mayor, or representative appointed by the mayor, of each first, second, and third class city of the county;

(6) One person to represent the fourth class cities of the county, if any, to be designated by the president of the association of Washington cities: *Provided*, That if there should be neither a first class nor a second class city within the county, the mayor, or the mayor's representative, of each fourth class city shall be a member;

(7) The chairman of the county legislative authority; and

(8) The county auditor. [1984 c 258 § 22; 1961 c 299 § 25.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.020 Districting committee—Duties—Districting plan. The district court districting committee shall meet at the call of the prosecuting attorney to prepare a plan for the districting of the county into one or more district court districts in accordance with the provisions of chapters 3.30 through 3.74 RCW. The plan shall include the following:

(1) The boundaries of each district proposed to be established;

(2) The number of judges to be elected in each district;

(3) The location of the central office, courtrooms and records of each court;

(4) The other places in the district, if any, where the court shall sit;

(5) The number and location of district court commissioners to be authorized, if any;

(6) The departments, if any, into which each district court shall be initially organized, including municipal departments provided for in chapter 3.46 RCW;

(7) The name of each district; and

(8) The allocation of the time and allocation of salary of each judge who will serve part time in a municipal department. [1984 c 258 § 23; 1965 ex.s. c 110 § 1; 1961 c 299 § 26.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.022 Location of offices and courtrooms. The districting plan may provide that the offices and courtrooms of more than one district may be in the same building: *Provided*, That no office or courtroom of any district shall be located further than two miles outside the boundary of the district which it serves. [1984 c 258 § 24; 1963 c 213 § 1.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.030 Districting plan—Adoption. Upon receipt of the districting plan, the county legislative authority shall hold a public hearing, pursuant to the provisions of RCW 36.32.120(7), as now or hereafter amended. At the hearing, anyone interested in the plan may attend and be heard as to the convenience which will be afforded to the public by the plan, and as to any other matters pertaining thereto. If the county legislative authority finds that the plan proposed by the districting committee conforms to the standards set forth in chapters 3.30 through 3.74 RCW and is conducive to the best interests and welfare of the county as a whole it may adopt such plan. If the county legislative authority finds that the plan does not conform to the standards as provided in chapters 3.30 through 3.74 RCW, the county legislative authority may modify, revise or amend the plan and adopt such amended or revised plan as the county's district court districting plan. The plan decided upon shall be adopted by the county legislative authority not later than six months after the classification of the county as class A or the adoption of the elective resolution. [1984 c 258 § 25; 1965 ex.s. c 110 § 2; 1961 c 299 § 27.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.031 Districting plan—Transitional provisions. As a part of the districting plan, the county legislative authority shall designate a date on which the terms of the district judges of the county shall end.

For each judicial position under the districting plan, the county legislative authority shall appoint a person qualified under RCW 3.34.060 who shall take office on the date designated by the county legislative authority and shall serve until the next quadrennial election of district judges as provided in RCW 3.34.050.

Pending cases, proceedings, and matters shall be transferred to the appropriate court as provided in RCW 3.74.900. [1984 c 258 § 26; 1965 ex.s. c 110 § 3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.040 Districting plan—Amendment. The districting committee may meet for the purpose of amending the districting plan at any time on call of the county legislative authority, the chairperson of the committee or a majority of its members. Amendments to the plan shall be submitted to the county legislative authority not later than March 15th of each year for adoption by the county legislative authority following the same procedure as with the original districting plan. Amendments shall be adopted not later than May 1st following submission by the districting committee. Any amendment which would reduce the salary or shorten the term of any judge shall not be effective until the next regular election for district judge. All other amendments may be effective on a date set by the county legislative authority. [1984 c 258 § 27; 1969 ex.s. c 66 § 3; 1961 c 299 § 28.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.050 District court districts—Standards. District court districts shall be established in accordance with the following standards:

- (1) Every part of the county shall be in some district.
- (2) The whole county may constitute one district.
- (3) There shall not be more districts than there are judges authorized for the county.
- (4) A district boundary shall not intersect the boundary of an election precinct.
- (5) A city shall not lie in more than one district.
- (6) Whenever a county is divided into more than one district, each district shall be so established as best to serve the convenience of the people of the district, considering the distances which must be traveled by parties and witnesses in going to and from the court and any natural barriers which may obstruct such travel. [1984 c 258 § 28; 1961 c 299 § 29.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.38.060 Joint district court districts. Joint districts may be established containing all or part of two or more counties. The county containing the largest portion of the population of a joint district shall be known as the "principal county" and each joint district shall be deemed to lie within the principal county for the purpose of chapters 3.30 through 3.74 RCW. A joint district may be established by resolution of one county concurred in by a resolution of each other county: *Provided*,

That the county legislative authority of a county containing the largest portion of the population of a city may include the portions of such city lying outside the county in a joint district without concurrence of the other counties.

Elections of judges in joint districts shall be conducted and canvassed in the same manner as elections of superior court judges in joint judicial districts. [1984 c 258 § 29; 1961 c 299 § 30.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 3.42

DISTRICT COURT COMMISSIONERS

(Formerly: Justice court commissioners)

Sections

3.42.010	District court commissioners—Appointment—Qualifications—Term of office.
3.42.020	Powers of commissioners.
3.42.030	Transfer of cases to district judge.
3.42.040	Compensation.

3.42.010 District court commissioners—Appointment—Qualifications—Term of office. When so authorized by the districting plan, one or more district court commissioners may be appointed in any district by the judges of the district. Each commissioner shall be a registered voter of the county in which the district or a portion thereof is located, and shall hold office at the pleasure of the appointing judges. Any person appointed as a commissioner authorized to hear or dispose of cases shall be a lawyer who is admitted to the practice of law in the state of Washington or who has passed the qualifying examination for lay judges as provided under RCW 3.34.060. [1984 c 258 § 30; 1980 c 162 § 7; 1961 c 299 § 31.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Severability—1980 c 162: See note following RCW 3.02.010.

District court commissioners
bond: RCW 3.34.090.
oath: RCW 3.34.080.

3.42.020 Powers of commissioners. Each district court commissioner shall have such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess and shall prescribe. [1984 c 258 § 31; 1979 ex.s. c 136 § 16; 1961 c 299 § 32.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

3.42.030 Transfer of cases to district judge. Any party may have a case transferred from a district court commissioner to a judge of the same district for hearing, by filing a motion for transfer. The commissioner shall forthwith transfer the case to the judge. [1984 c 258 § 32; 1961 c 299 § 33.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.42.040 Compensation. District court commissioners shall receive such compensation as the county legislative authority or city council shall provide. [1984 c 258 § 33; 1969 ex.s. c 66 § 4; 1961 c 299 § 34.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

District court commissioners

salary: RCW 3.46.090 and 3.58.030.

travel expenses: RCW 3.58.040.

Chapter 3.46

MUNICIPAL DEPARTMENTS

Sections

3.46.010	Municipal department authorized.
3.46.020	Judges.
3.46.030	Jurisdiction.
3.46.040	Petition.
3.46.050	Selection of full time judges.
3.46.060	Selection of part time judges.
3.46.070	Election.
3.46.080	Term and removal.
3.46.090	Salary—City cost.
3.46.100	Vacancy.
3.46.110	Night sessions.
3.46.120	Revenue—Disposition.
3.46.130	Facilities.
3.46.140	Personnel.
3.46.145	Court commissioners.
3.46.150	Termination of municipal department—Agreement covering costs of handling resulting criminal cases—Arbitration.

Rules of court: See *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)*.

3.46.010 Municipal department authorized. Any city may secure the establishment of a municipal department of the district court, to be designated "The Municipal Department of (city)." Such department may also be designated "The Municipal Court of (city)." [1984 c 258 § 72; 1961 c 299 § 35.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.020 Judges. Each judge of a municipal department shall be a judge of the district court in which the municipal department is situated. Such judge shall be designated as a municipal judge. [1987 c 3 § 1; 1984 c 258 § 73; 1961 c 299 § 36.]

Severability—1987 c 3: "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." [1987 c 3 § 21.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.030 Jurisdiction. A municipal department shall have exclusive jurisdiction of matters arising from ordinances of the city, and no jurisdiction of other matters except as conferred by statute. [1985 c 303 § 13; 1961 c 299 § 37.]

3.46.040 Petition. Establishment of a municipal department shall be initiated by a petition from the legislative body of the city to the county legislative authority.

Such petition shall be filed not less than thirty days prior to February 1, 1962, or any subsequent year, and shall set forth: (1) The number of full time and part time judges required for the municipal department; (2) The amount of time for which a part time judge will be required for the municipal department; and (3) Whether the full time judge or judges will be elected or appointed. In a petition filed subsequent to 1962 provision shall be made for temporary appointment of a municipal judge to fill each elective position until the next election for district judges. The petition shall be forthwith transmitted to the districting committee. The organization of the municipal department shall be incorporated into the districting plan. The districting committee in its plan shall designate the proportion of the salary of each judge serving as a part time municipal judge to be paid by the city, which shall be proportionate to the time of such judge allotted to the municipal department by the districting plan. A city may withdraw its petition any time prior to adoption of the districting plan by the county legislative authority, and thereupon the municipal department pursuant to this chapter shall not be established. [1984 c 258 § 74; 1961 c 299 § 38.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.050 Selection of full time judges. Each city may select its full time municipal judge or judges by election, or by appointment in such manner as the city legislative body determines: *Provided*, That in cities having a population in excess of four hundred thousand, the municipal judges shall be elected. [1975 c 33 § 2; 1961 c 299 § 39.]

Severability—1975 c 33: See note following RCW 35.21.780.

3.46.060 Selection of part time judges. In district court districts having more than one judge, appointment of part time municipal judges shall be made from the judges of the district by the mayor in such manner as the city legislative body shall determine. [1984 c 258 § 75; 1961 c 299 § 40.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.070 Election. In each district court district where an election is held for the position of municipal judge, the county auditor, prior to the date for filing declarations for the office of district judge, shall designate the proper number of municipal judge positions, commencing with number one, and if there is more than one municipal judge in any municipal department, one or more positions may, at the request of the legislative body of the city, be further designated as municipal traffic judge positions. Only voters of the city shall vote for municipal judges. [1984 c 258 § 76; 1961 c 299 § 41.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.080 Term and removal. A municipal judge shall serve in such capacity for his or her term as district

judge and may be removed from so serving in the same manner and for the same reasons as he or she may be removed from the office of district judge. [1984 c 258 § 77; 1961 c 299 § 42.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.090 Salary—City cost. The salary of a full time municipal judge shall be paid wholly by the city. The salary of a district judge serving a municipal department part time shall be paid jointly by the county and the city in the same proportion as the time of the judge has been allocated to each. Salaries of court commissioners serving the municipal department shall be paid by the city. [1984 c 258 § 78; 1969 ex.s. c 66 § 5; 1961 c 299 § 43.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.100 Vacancy. A vacancy in a position of full time municipal judge shall be filled for the unexpired term by appointment in such manner as the city may determine. In districts having more than one judge, a vacancy in a position of part time municipal judge shall be filled for the unexpired term by appointment in such manner as the city shall determine from the judges of the district, including any judge appointed by the county commissioners to fill an unexpired term. [1984 c 258 § 79; 1961 c 299 § 44.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.46.110 Night sessions. A city may authorize its municipal department to hold night sessions. [1961 c 299 § 45.]

3.46.120 Revenue—Disposition. (1) All money received by the clerk of a municipal department including penalties, fines, bail forfeitures, fees and costs, except those costs specified in RCW 4.84.010 or otherwise provided for by statute, assessed and collected in whole or in part by the court shall be paid by the clerk to the city treasurer.

(2) The city treasurer shall remit monthly thirty-two percent of the money received under this section, other than for parking infractions, to the state treasurer. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received under this section shall be retained by the city and deposited as provided by law. [1985 c 389 § 3; 1984 c 258 § 303; 1975 1st ex.s. c 241 § 4; 1961 c 299 § 46.]

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Legislative intent—1984 c 258 §§ 302–340: "It is the intent of the legislature to assure accountability, uniformity, economy, and efficiency in the collection and distribution by superior, district, and municipal courts of fees, fines, forfeitures, and penalties assessed and collected for violations of state statutes, and county, city, and town ordinances." [1984 c 258 § 301.]

3.46.130 Facilities. All courtrooms, offices, facilities and supplies for the operation of a municipal department shall be furnished by the city. [1961 c 299 § 47.]

3.46.140 Personnel. All such personnel shall be deemed employees of the city, shall be compensated wholly by the city, and shall be appointed under and subject to any applicable civil service laws and regulations. [1961 c 299 § 48.]

3.46.145 Court commissioners. The provisions of chapter 3.42 RCW shall apply to this chapter 3.46 RCW. [1969 ex.s. c 66 § 6.]

3.46.150 Termination of municipal department—Agreement covering costs of handling resulting criminal cases—Arbitration. Any city, having established a municipal department as provided in this chapter may, by written notice to the county legislative authority not less than thirty days prior to February 1st of any year, require the termination of the municipal department created pursuant to this chapter. However, the city may not give the written notice required by this section unless the city has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 210; 1961 c 299 § 49.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

**Chapter 3.50
MUNICIPAL DEPARTMENTS—ALTERNATE
PROVISION**

Sections	
3.50.003	Definition.
3.50.005	Legislative finding—Alternative court structure for cities and towns of four hundred thousand or less.
3.50.007	Cities and towns of four hundred thousand or less to operate municipal court under this chapter or chapter 3.46 RCW—Municipal judges in office on July 1, 1984—Terms.
3.50.010	Municipal court authorized in cities of four hundred thousand or less.
3.50.020	Jurisdiction.
3.50.030	Violations bureau for traffic cases—Disposition of moneys collected.
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3.50.800	Repeal of municipal criminal code—Agreement covering costs of handling resulting criminal cases—Arbitration—Renewal.
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Rules of court: See *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)*.

3.50.003 Definition. "Mayor," as used in this chapter, means the chief administrative officer of the city. [1984 c 258 § 125.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.005 Legislative finding—Alternative court structure for cities and towns of four hundred thousand or less. The legislature finds that there is a multitude of statutes governing the municipal courts of the state. This situation is confusing and misleading to attorneys, judges, court personnel, and others who work with the municipal courts. The legislature therefore finds that a reorganization of the municipal courts of the state would allow those courts to operate in a more effective and efficient manner. This chapter provides a court structure which may be used by cities and towns with a population of four hundred thousand or less which choose to operate under this chapter. [1984 c 258 § 101.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: "The enactment of sections 101 through 139 of this act shall not affect any case, proceeding, appeal, or other matter pending in any court operating under Title 35 or

35A RCW on the effective date of this act [July 1, 1984]. The enactment of sections 101 through 139 of this act shall not have the effect of terminating or in any way modifying any right or liability, civil or criminal, which may be in existence on the effective date of this act [July 1, 1984]." [1984 c 258 § 128.] For disposition of sections 101 through 139 of this act, see Codification Tables, this volume.

3.50.007 Cities and towns of four hundred thousand or less to operate municipal court under this chapter or chapter 3.46 RCW—Municipal judges in office on July 1, 1984—Terms. After January 1, 1985, cities and towns with a population of four hundred thousand or less which are operating a municipal court under Title 35 or 35A RCW shall operate the court pursuant to this chapter. In the alternative, a city or town may establish a municipal department of a district court under chapter 3.46 RCW.

Municipal judges holding office on July 1, 1984, shall continue to hold office until expiration of their term or January 1, 1986, whichever occurs first. [1984 c 258 § 102.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.010 Municipal court authorized in cities of four hundred thousand or less. Any city or town with a population of four hundred thousand or less may by ordinance provide for an inferior court to be known and designated as a municipal court, which shall be entitled "The Municipal Court of _____ (insert name of city or town)", hereinafter designated and referred to as "municipal court", which court shall have jurisdiction and shall exercise all powers by this chapter declared to be vested in the municipal court, together with such other powers and jurisdiction as are generally conferred upon such court in this state either by common law or by express statute. [1984 c 258 § 103; 1961 c 299 § 50.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.020 Jurisdiction. The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city in which the municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. [1985 c 303 § 14; 1984 c 258 § 104; 1979 ex.s. c 136 § 17; 1961 c 299 § 51.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

3.50.030 Violations bureau for traffic cases—Disposition of moneys collected. Every city or town may establish and operate under the supervision of the municipal court a violations bureau to assist the court in processing traffic cases. Each municipal court shall designate the specific traffic offenses and traffic infractions under city or town ordinances which may be processed by the violations bureau.

A violations bureau may be authorized to process traffic infractions in conformity with chapter 46.63 RCW.

A violations bureau may be authorized to receive the posting of bail for specified offenses and, to the extent authorized by court order, permitted to accept forfeiture of bail and payment of penalties. Any violations bureau, upon accepting the prescribed bail, shall issue a receipt therefor to the alleged violator, acknowledging the posting thereof and informing the accused of the legal consequences of bail forfeiture. Any person charged with any criminal traffic offense within the authority of the violations bureau may, upon signing a written appearance, a written plea of guilty and a written waiver of trial, pay to the violations bureau the fine established for the offense charged and costs and this shall have the same effect as a court conviction. All penalties and forfeitures paid to a violations bureau for the violation of municipal ordinance shall be placed in the city or town general fund or such other fund as may be prescribed by ordinance of the city or town or laws of the state of Washington.

Any employees of an existing violations bureau of any city shall continue as city employees. [1984 c 258 § 105; 1979 ex.s. c 136 § 18; 1961 c 299 § 52.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

3.50.040 Municipal judges—Appointed—Terms, qualifications—District judge as part time municipal judge. Within thirty days after the effective date of the ordinance creating the municipal court, the mayor of each city or town shall appoint a municipal judge or judges of the municipal court for a term of four years. The terms of judges serving on July 1, 1984, and municipal judges who are appointed to terms commencing before January 1, 1986, shall expire January 1, 1986. The terms of their successors shall commence on January 1, 1986, and on January 1 of each fourth year thereafter, pursuant to appointment or election as provided in this chapter. Appointments shall be made on or before December 1 of the year next preceding the year in which the terms commence.

The legislative authority of a city or town that has the general power of confirmation over mayoral appointments shall have the power to confirm the appointment of a municipal judge.

A person appointed as a full-time or part-time municipal judge shall be a citizen of the United States of America and of the state of Washington; and an attorney admitted to practice law before the courts of record of the state of Washington: *Provided*, That in a municipality having a population less than five thousand persons, a person other than an attorney may be the judge. Any city or town shall have authority to appoint a district judge as its municipal judge when the municipal judge is not required to serve full time. In the event of the appointment of a district judge, the city or town shall pay a pro rata share of the salary. [1984 c 258 § 106; 1975-'76 2nd ex.s. c 35 § 1; 1961 c 299 § 53.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.050 Municipal judge may be elective position—Qualifications, term. The legislative authority of the city or town may, by ordinance, provide that the position of municipal judge within the city or town shall be an elective position. The ordinance shall provide for the qualifications of the municipal judge which shall be the same as the qualifications necessary for the appointment thereof; and further, shall provide that the municipal judge shall be elected in the same manner as other elective city officials are elected to office, and that the term of the municipal judge shall be for a term of four years commencing on January 1, 1986, and every four years thereafter. [1984 c 258 § 107; 1961 c 299 § 54.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.060 Termination of municipal court—Requirements—Establishment of court. A city or town electing to establish a municipal court pursuant to this chapter may terminate such court by adoption of an appropriate ordinance. However no municipal court may be terminated unless the municipality has complied with RCW 3.50.805, 35.22.425, 35.23.595, 35.24.455, 35.27.515, 35.30.100, and 35A.11.200.

A city or town newly establishing a municipal court pursuant to this chapter shall do so by adoption of an appropriate ordinance on or before December 1 of any year, to take effect January 1 of the following year. [1984 c 258 § 108; 1961 c 299 § 55.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.070 Additional judges—Appointment, election. Additional full or part time judges may be appointed or elected, as provided by ordinance of the legislative body of the city or town when public interest

and the administration of justice makes such additional judge or judges necessary. [1984 c 258 § 109; 1961 c 299 § 56.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.080 Salaries of judges—Payment of court operating costs from city funds—Judges and employees as city employees. Salaries of municipal court judges shall be fixed by ordinance. All costs of operating the municipal court, including but not limited to salaries of judges and court employees, dockets, books of records, forms, furnishings, and supplies, shall be paid wholly out of the funds of the city or town. The city shall provide a suitable place for holding court and pay all expenses of maintaining it.

All employees of the municipal court shall, for all purposes, be deemed employees of the city or town. They shall be appointed by and serve at the pleasure of the court. [1984 c 258 § 111; 1961 c 299 § 57.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Salaries of municipal judges in cities over 400,000: RCW 3.58.010 and 35.20.160.

3.50.090 Judges pro tem. The mayor shall, in writing, appoint judges pro tem who shall act in the absence or disability of the regular judge of a municipal court or subsequent to the filing of an affidavit of prejudice. The judges pro tem shall be qualified to hold the position of judge of the municipal court as provided herein. The municipal court judges pro tem shall receive such compensation as shall be fixed by the ordinances of the legislative body of the city or town wherein the municipal court is located. The term of the appointment shall be specified in writing but in any event shall not extend beyond the term of the appointing mayor. [1984 c 258 § 112; 1961 c 299 § 58.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.093 Municipal judge—Vacancy—Appointment. Any vacancy in the municipal court due to a death, disability, or resignation of a municipal court judge shall be filled by the mayor, for the remainder of the unexpired term. The appointment shall be subject to confirmation by the legislative authority of the city or town if the legislative authority has the general power of confirmation over mayoral appointments. The appointed judge shall be qualified to hold the position of judge of the municipal court as provided in this chapter. [1984 c 258 § 113.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.095 Municipal judge—Removal from office.

A municipal judge shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of the office. [1984 c 258 § 124.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.097 Judge's oath—Bonds.

Every judge of a municipal court, before entering upon the duties of the office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge of the municipal court of the city of _____ (naming such city) according to the best of my ability." The oath shall be filed in the office of the county auditor. The judge shall also give such bonds to the state and city for the faithful performance of the judge's duties as may be by law or ordinance directed. [1984 c 258 § 110.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.100 Revenue—Disposition.

(1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs except those costs awarded to prevailing parties under RCW 4.84.010, 36.18.040, or other similar statute, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or deposited in such other funds as may be designated by the laws of the state of Washington.

(2) The city treasurer shall remit monthly thirty-two percent of the money received under this section, other than for parking infractions, to the state treasurer. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received under this section shall be retained by the city and deposited as provided by law. [1985 c 389 § 4; 1984 c 258 § 304; 1975 1st ex.s. c 241 § 3; 1961 c 299 § 59.]

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

3.50.110 Sessions.

The municipal court shall be open and shall hold such regular and special sessions as may be prescribed by the legislative body of the city or town: *Provided*, That the municipal court shall not be open on nonjudicial days. [1984 c 258 § 114; 1961 c 299 § 60.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.115 Municipal court seal.

The municipal court shall have a seal which shall be the vignette of George Washington, with the words "Seal of The Municipal Court of _____ (name of city), State of Washington," surrounding the vignette. [1984 c 258 § 123.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.125 Transfer within municipal court.

A transfer of a case from the municipal court to either another municipal judge of the same city or to a judge pro tempore appointed in the manner prescribed by this chapter shall be allowed in accordance with RCW 3.66.090 in all civil and criminal proceedings. [1984 c 258 § 122.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.135 Request for jury trial in civil cases—

Exception—Fee—Juror compensation—Jury trials in criminal cases. In all civil cases, the plaintiff or defendant may demand a jury, which shall consist of six citizens of the state who shall be impaneled and sworn as in cases before district courts, or the trial may be by a judge of the municipal court: *Provided*, That no jury trial may be held on a proceeding involving a traffic infraction. A party requesting a jury shall pay to the court a fee which shall be the same as that for a jury in district court. If more than one party requests a jury, only one jury fee shall be collected by the court. The fee shall be apportioned among the requesting parties. Each juror may receive up to twenty-five dollars but in no case less than ten dollars for each day in attendance upon the municipal court, and in addition thereto shall receive mileage at the rate determined under RCW 43.03.060: *Provided*, That the compensation paid jurors shall be determined by the legislative authority of the city and shall be uniformly applied. Jury trials shall be allowed in all criminal cases unless waived by the defendant. [1984 c 258 § 126.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.300 Execution of sentence—Jail in lieu of

fine and costs, computation. In all cases of conviction, unless otherwise provided in chapters 3.30 through 3.74 RCW as now or hereafter amended, where a jail sentence is given to the defendant, execution shall issue accordingly and where the judgment of the court is that the defendant pay a fine and costs, the defendant may be committed to jail until the judgment is paid in full.

A defendant who has been committed shall be discharged upon the payment for such part of the fine and costs as remains unpaid after deducting from the whole amount any previous payment, and after deducting the amount allowed for each day of imprisonment, which amount shall be the same and computed in the same manner as provided for superior court cases in RCW 10.82.030 and 10.82.040, as now or hereafter amended. In addition, all other proceedings in respect of such fine and costs shall be the same as in like cases in the superior court. [1984 c 258 § 115; 1969 c 84 § 1; 1961 c 299 § 79.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.320 Deferral of sentence—Change of plea, dismissal. After a conviction, the court may defer sentencing and place the defendant on probation and prescribe the conditions thereof, but in no case shall it extend for more than two years from the date of conviction. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty, permit the defendant to enter a plea of not guilty, and dismiss the charges. [1984 c 258 § 116; 1983 c 156 § 5; 1961 c 299 § 81.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.330 Continuing jurisdiction of court after sentence. For a period not to exceed two years after imposition of sentence, the court shall have continuing jurisdiction and authority to suspend the execution of all or any part of the sentence upon stated terms, including installment payment of fines. [1984 c 258 § 117; 1983 c 156 § 6; 1961 c 299 § 82.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.340 Revocation of deferred or suspended sentence—Limitations—Termination of probation. Deferral of sentence and suspension of execution of sentence may be revoked if the defendant violates or fails to carry out any of the conditions of the deferral or suspension. Upon the revocation of the deferral or suspension, the court shall impose the sentence previously suspended or any unexecuted portion thereof. In no case shall the court impose a sentence greater than the original sentence, with credit given for time served and money paid on fine and costs.

Any time before entering an order terminating probation, the court may revoke or modify its order suspending the imposition or execution of the sentence. If the ends of justice will be served and when warranted by the reformation of the probationer, the court may terminate the period of probation and discharge the person so held. [1984 c 258 § 118; 1983 c 156 § 7; 1961 c 299 § 83.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.425 Issuance of criminal process. All criminal process issued by the municipal court shall be in the name of the state of Washington and run throughout the state, and be directed to and served by the chief of police, marshal, or other police officer of any city or to any sheriff in the state. [1984 c 258 § 127.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.430 Criminal prosecution in city's name for violation of ordinances. All criminal prosecutions for the violation of a city ordinance shall be conducted in the name of the city and may be upon the complaint of any person. [1984 c 258 § 119; 1961 c 299 § 92.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.440 Penalty if no other punishment prescribed. Every person convicted by the municipal court of a violation of the criminal provisions of an ordinance for which no punishment is specifically prescribed in the ordinance shall be punished by a fine of not more than five thousand dollars or imprisonment in the city jail for a period not to exceed one year, or both such fine and imprisonment. [1984 c 258 § 120; 1961 c 299 § 93.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.450 Pleadings, practice and procedure not provided for governed by district court law. Pleadings, practice and procedure in cases not governed by statutes or rules specifically applicable to municipal courts shall, insofar as applicable, be governed by the statutes and rules now existing or hereafter adopted governing pleadings, practice and procedure applicable to district courts. [1984 c 258 § 121; 1961 c 299 § 94.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

3.50.800 Repeal of municipal criminal code—Agreement covering costs of handling resulting criminal cases—Arbitration—Renewal. (1) If a municipality has, prior to July 1, 1984, repealed in its entirety that portion of its municipal code defining crimes but continues to hear and determine traffic infraction cases under chapter 46.63 RCW in a municipal court, the municipality and the appropriate county shall, prior to January 1, 1985, enter into an agreement under chapter 39.34

RCW under which the county is to be paid a reasonable amount for costs incurred after January 1, 1985, associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. If the municipality and the county cannot come to an agreement within the time prescribed by this section, they shall be deemed to have entered into an agreement to submit the issue to arbitration pursuant to chapter 7.04 RCW. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

(2) The agreement between the municipality and the county shall include provisions for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 202.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.50.805 Termination of municipal court—Agreement covering costs of handling resulting criminal cases—Arbitration—Repeal of municipal criminal code—Agreement—Arbitration—Repeal of a municipal crime equivalent to offense in RCW 46.63.020—Agreement—Arbitration. (1) A municipality operating a municipal court under this chapter shall not terminate that court unless the municipality has reached an agreement with the appropriate county or another municipality under chapter 39.34 RCW under which the county or municipality is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district or municipal court as a result of the termination. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county or municipality are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county or municipality have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. A municipality that has entered into agreements with other municipalities that have terminated their municipal courts may not thereafter terminate its court unless each municipality has reached an agreement with the appropriate county in accordance with this section.

(2) A municipality operating a municipal court under this chapter may not repeal in its entirety that portion of its municipal code defining crimes while retaining the

court's authority to hear and determine traffic infractions under chapter 46.63 RCW unless the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW.

(3) A municipality operating a municipal court under this chapter may not repeal a provision of its municipal code which defines a crime equivalent to an offense listed in RCW 46.63.020 unless the municipality has reached an agreement with the county under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall provide for periodic review and renewal of the terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04 RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04 RCW. [1984 c 258 § 203.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 3.54

CLERKS AND DEPUTY CLERKS

Sections	
3.54.010	Compensation.
3.54.020	Powers and duties.

3.54.010 Compensation. The clerk and deputy clerks of district courts shall receive such compensation as shall be provided by the county legislative authority. [1984 c 258 § 34; 1971 c 73 § 6; 1961 c 299 § 98.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.54.020 Powers and duties. The district courts shall prescribe the duties of the clerk and deputy clerks. Such duties shall include all of the requirements of RCW 3.62.020 and 3.62.040 as now or hereafter amended and the receipt of bail and additionally the power to:

- (1) Accept and enter pleas;
- (2) Receive bail as set by the court;
- (3) Set cases for trial;
- (4) Administer oaths. [1975 1st ex.s. c 241 § 1; 1971 c 73 § 7; 1961 c 299 § 99.]

Chapter 3.58 SALARIES AND EXPENSES

Sections

3.58.010	Salaries of full time district court judges.
3.58.020	Salaries of part time district judges.
3.58.030	Payment of salaries.
3.58.040	Travel expenses.
3.58.050	Other court expenses—Lease, construction, of court-rooms and offices.

3.58.010 Salaries of full time district court judges.

The annual salary of each full time district court judge shall be established by the Washington citizen's commission on salaries for elected officials. A member of the legislature whose term of office is partly coextensive with or extends beyond the present term of office of any of the officials whose salary is increased by virtue of the provisions of RCW 43.03.010, 2.04.092, 2.06.062, 2.08.092, and 3.58.010 shall be eligible to be appointed or elected to any of the offices the salary of which is increased hereby but he shall not be entitled to receive such increased salary until after the expiration of his present term of office and his subsequent election or reelection to the office to which he was appointed or elected respectively during his term of office as legislator. [1986 c 155 § 7; 1985 c 7 § 1; 1983 c 186 § 2; 1980 c 162 § 8; 1979 ex.s. c 255 § 8; 1977 ex.s. c 318 § 5; 1975 1st ex.s. c 263 § 5; 1975 c 33 § 3; 1974 ex.s. c 149 § 6 (Initiative Measure No. 282, approved November 6, 1973); 1972 ex.s. c 100 § 4; 1969 c 52 § 1; 1965 c 147 § 1; 1961 c 299 § 100.]

Contingent effective date—Severability—1986 c 155: See notes following RCW 43.03.300.

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

Effective date—1979 ex.s. c 255: See note following RCW 43.03.010.

Effective date—1977 ex.s. c 318: See note following RCW 43.03.010.

Severability—Effective date—1975 1st ex.s. c 263: See notes following RCW 43.03.010.

Severability—1975 c 33: See note following RCW 35.21.780.

Severability—1974 ex.s. c 149 (Initiative Measure No. 282): See note following RCW 43.03.010.

District court judges' salaries: State Constitution Art. 28 § 1.

District courts, judges pro tempore, salaries: RCW 3.34.130.

Municipal courts, cities over 400,000, judges' salaries: RCW 35.20.160.

Superior courts, judges' salaries: RCW 2.08.092.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

3.58.020 Salaries of part time district judges. The annual salaries of part time district judges shall be set

by the county legislative authority in each county in accordance with the minimum and maximum salaries provided in this subsection:

(1) In districts having a population under two thousand five hundred persons, the salary shall be not less than one thousand five hundred dollars nor more than twelve thousand dollars;

(2) In districts having a population of two thousand five hundred persons or more, but less than five thousand, the salary shall be set at not less than one thousand eight hundred dollars nor more than fifteen thousand five hundred dollars;

(3) In districts having a population of five thousand persons or more, but less than seven thousand five hundred, the salary shall be set at no less than one thousand eight hundred or more than twenty-five thousand dollars;

(4) In districts having a population of seven thousand five hundred persons or more, but less than ten thousand, the salary shall be set at not less than two thousand two hundred fifty dollars or more than thirty thousand dollars;

(5) In districts having a population of ten thousand persons or more, but less than twenty thousand, the salary shall be set at no less than three thousand dollars or more than thirty-two thousand dollars;

(6) In districts having a population of twenty thousand persons or more, but less than thirty thousand, the salary shall be set at not less than five thousand two hundred fifty dollars or more than forty thousand dollars. [1984 c 258 § 35; 1982 c 29 § 2; 1979 ex.s. c 255 § 9; 1974 ex.s. c 95 § 1; 1969 ex.s. c 192 § 1; 1961 c 299 § 101.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—1979 ex.s. c 255: See note following RCW 43.03.010.

District judges—Full time—Other: RCW 3.34.040.

3.58.030 Payment of salaries. The compensation of judges, clerks, judges pro tempore, deputy clerks, and court commissioners payable by the county shall be paid monthly out of the county treasury from the same funds out of which other salaried county officers are paid. [1984 c 258 § 36; 1961 c 299 § 102.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.58.040 Travel expenses. District judges, judges pro tempore, court commissioners, and district court employees shall receive their reasonable traveling expenses when engaged in the business of the court as provided in chapter 42.24 RCW. [1984 c 258 § 37; 1983 c 3 § 3; 1961 c 299 § 103.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.58.050 Other court expenses—Lease, construction, of courtrooms and offices. The county legislative authority shall furnish all necessary facilities for the district courts, including suitable courtrooms, furniture,

books, stationery, postage, office equipment, heat, light and telephone and may lease or construct courtrooms and offices for such purpose. The county legislative authority shall not be required to furnish courtroom space in any place other than as provided in the districting plan. [1984 c 258 § 38; 1963 c 213 § 3; 1961 c 299 § 104.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 3.62 INCOME OF COURT

Sections

3.62.010	Suspension of fine or penalty.
3.62.020	Costs, fees, fines, forfeitures, and penalties except city cases—Disposition.
3.62.040	Costs, fines, forfeitures, and penalties from city cases—Disposition.
3.62.050	Court expenditures to be paid from county current expense fund—Exception.
3.62.060	Filing fees in civil cases.
3.62.070	Filing fees in criminal cases and traffic infractions.
3.62.090	Public safety and education assessment—Amount.

3.62.010 Suspension of fine or penalty. The district court may at the time of sentencing or at any time thereafter suspend a portion or all of a fine or penalty. [1984 c 258 § 305; 1961 c 299 § 105.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Intent—1984 c 258: See note following RCW 3.46.120.

3.62.020 Costs, fees, fines, forfeitures, and penalties except city cases—Disposition. (1) Except as provided in subsection (4) of this section, all costs except those costs awarded to prevailing parties under RCW 4.84-.010, 36.18.040, or other similar statute, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the division of municipal corporations, noting the information necessary for crediting of such funds as required by law.

(2) The county treasurer shall remit thirty-two percent of the money received under subsection (1) of this section to the state treasurer. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund. [1985 c 389 § 5; 1984 c 258 § 306; 1971 c 73 § 8; 1969 ex.s. c 199 § 2; 1961 c 299 § 106.]

Effective date—1985 c 389: See note following RCW 27.24.070.
Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Intent—1984 c 258: See note following RCW 3.46.120.

3.62.040 Costs, fines, forfeitures, and penalties from city cases—Disposition. (1) Except as provided in subsection (4) of this section, all costs except those costs awarded to prevailing parties under RCW 4.84.010, 36.18.040, or other similar statute, fines, forfeitures and penalties assessed and collected, in whole or in part, by district courts because of violations of city ordinances shall be remitted by the clerk of the district court at least monthly directly to the treasurer of the city wherein the violation occurred.

(2) The city treasurer shall remit monthly thirty-two percent of the money received under this section, other than for parking infractions, to the state treasurer. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the money received under this section shall be retained by the city and deposited as provided by law.

(4) All money collected for city parking infractions shall be remitted by the clerk of the district court at least monthly to the city treasurer for deposit in the city's general fund. [1985 c 389 § 6; 1984 c 258 § 307; 1975 1st ex.s. c 241 § 2; 1961 c 299 § 108.]

Effective date—1985 c 389: See note following RCW 27.24.070.
Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Intent—1984 c 258: See note following RCW 3.46.120.

3.62.050 Court expenditures to be paid from county current expense fund—Exception. The total expenditures of the district courts, including the cost of providing courtroom and office space, the cost of probation and parole services and any personnel employment therefor, and the cost of providing services necessary for the preparation and presentation of a defense at public expense, except costs of defense to be paid by a city pursuant to RCW 3.62.070, shall be paid from the county current expense fund. [1987 c 202 § 114; 1984 c 258 § 308; 1973 1st ex.s. c 10 § 1; 1969 ex.s. c 199 § 3; 1969 c 111 § 1; 1963 c 213 § 2; 1961 c 299 § 109.]

Intent—1987 c 202: See note following RCW 2.04.190.
Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Intent—1984 c 258: See note following RCW 3.46.120.

3.62.060 Filing fees in civil cases. In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of twenty-five dollars. No party shall be compelled to pay to the court any other fees or charges up to and including the rendition of judgment in the action. [1987 c 382 § 2; 1984 c 258 § 309; 1981 c 330 § 1; 1980 c 162 § 9; 1969 c 25 § 1; 1965 c 55 § 1; 1961 c 299 § 110.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1981 c 330: "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." [1981 c 330 § 11.]

Effective dates, savings—Severability—1980 c 162: See notes following RCW 3.02.010.

3.62.070 Filing fees in criminal cases and traffic infractions. Except in traffic cases wherein bail is forfeited or a monetary penalty paid to a violations bureau, and except in cases filed in municipal departments established pursuant to chapter 3.46 RCW and except in cases where a city has contracted with another city for such services pursuant to chapter 39.34 RCW, in every criminal or traffic infraction action filed by a city for an ordinance violation, the city shall be charged a filing fee determined pursuant to an agreement as provided for in chapter 39.34 RCW, the interlocal cooperation act, between the city and the county providing the court service. In such criminal or traffic infraction actions the cost of providing services necessary for the preparation and presentation of a defense at public expense are not within the filing fee and shall be paid by the city. In all other criminal or traffic infraction actions, no filing fee shall be assessed or collected: *Provided*, That in such cases, for the purposes of RCW 3.62.010, four dollars or the agreed filing fee of each fine or penalty, whichever is greater, shall be deemed filing costs. In the event no agreement is reached between a municipal corporation and the county providing the court service within ninety days of September 1, 1979, the municipal corporation and the county shall be deemed to have entered into an agreement to submit the issue to arbitration pursuant to chapter 7.04 RCW, and the municipal corporation and the county shall be entitled to the same rights and subject to the same duties as other parties who have agreed to submit to arbitration pursuant to chapter 7.04 RCW. In the event that such issue is submitted to arbitration, the arbitrator or arbitrators shall only consider those additional costs borne by the county in providing district court services for such city. [1984 c 258 § 39; 1980 c 128 § 14; 1979 ex.s. c 129 § 1; 1973 1st ex.s. c 10 § 2; 1961 c 299 § 111.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

3.62.090 Public safety and education assessment—Amount. (1) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions, by all courts organized under Title 3 or 35 RCW a public safety and education assessment equal to sixty percent of such fines, forfeitures, or penalties, which shall be remitted as provided in chapters 3.46, 3.50, 3.62, and 35.20 RCW. The assessment required by this section shall not be suspended or waived by the court.

(2) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions and for fines levied under RCW

46.61.515, and in addition to the public safety and education assessment required under subsection (1) of this section, by all courts organized under Title 3 or 35 RCW, an additional public safety and education assessment equal to fifty percent of the public safety and education assessment required under subsection (1) of this section, which shall be remitted to the state treasurer and deposited as provided in RCW 43.08.250. The additional assessment required by this subsection shall not be suspended or waived by the court. [1986 c 98 § 4; 1984 c 258 § 337.]

Effective date—1986 c 98: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1986." [1986 c 98 § 5.] Section 4 of this act consists of the 1986 c 98 amendments to RCW 3.62.090.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Public safety and education account: RCW 43.08.250.

Chapter 3.66 JURISDICTION AND VENUE

Sections	
3.66.010	General powers of district court.
3.66.020	Civil jurisdiction.
3.66.030	Restrictions on civil jurisdiction.
3.66.040	Venue—Civil action.
3.66.050	Transfer of proceedings.
3.66.060	Criminal jurisdiction.
3.66.065	Assessment of punishment.
3.66.067	Assessment of punishment—Deferral of sentence, probation—Withdrawal of plea and dismissal of charges.
3.66.068	Assessment of punishment—Suspension of sentence—Terms.
3.66.069	Assessment of punishment—Revocation of deferred or suspended sentence—Limitations—Termination of probation.
3.66.070	Venue—Criminal actions.
3.66.080	Criminal venue corrected.
3.66.090	Change of venue.
3.66.095	Removal of certain civil actions to superior court.
3.66.100	Territorial jurisdiction—Process.
3.66.110	Advertising authority to solemnize marriages is breach of judicial ethics.

3.66.010 General powers of district court. The justices of the peace elected in accordance with chapters 3.30 through 3.74 RCW are authorized to hold court as judges of the district court for the trial of all actions enumerated in chapters 3.30 through 3.74 RCW or assigned to the district court by law; to hear, try, and determine the same according to the law, and for that purpose where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature shall apply to such district court as far as the same may be applicable and not inconsistent with the provisions of chapters 3.30 through 3.74 RCW. The district court shall, upon the demand of either party, impanel a jury to try any civil or

criminal case in accordance with the provisions of chapter 12.12 RCW. No jury trial may be held in a proceeding involving a traffic infraction. [1984 c 258 § 40; 1979 ex.s. c 136 § 20; 1961 c 299 § 112.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Powers and jurisdiction of district court commissioner: RCW 3.42.020.

3.66.020 Civil jurisdiction. The district court shall have jurisdiction and cognizance of the following civil actions and proceedings:

(1) Of an action arising on contract for the recovery of money only in which the sum claimed does not exceed seven thousand five hundred dollars;

(2) Of an action for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same, when the amount of damages claimed does not exceed seven thousand five hundred dollars; also of actions to recover the possession of personal property when the value of such property as alleged in the complaint, does not exceed seven thousand five hundred dollars;

(3) Of an action for a penalty not exceeding seven thousand five hundred dollars;

(4) Of an action upon a bond conditioned for the payment of money, when the amount claimed does not exceed seven thousand five hundred dollars, though the penalty of the bond exceeds that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;

(5) Of an action on an undertaking or surety bond taken by the court, when the amount claimed does not exceed seven thousand five hundred dollars;

(6) Of an action for damages for fraud in the sale, purchase, or exchange of personal property, when the damages claimed do not exceed seven thousand five hundred dollars;

(7) To take and enter judgment on confession of a defendant, when the amount of the judgment confessed does not exceed seven thousand five hundred dollars;

(8) To issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects, when the amount does not exceed seven thousand five hundred dollars; and

(9) Of all other actions and proceedings of which jurisdiction is specially conferred by statute, when the amount involved does not exceed seven thousand five hundred dollars and the title to, or right of possession of, or a lien upon real property is not involved.

The seven thousand five hundred dollar amounts provided in subsections (1) through (9) of this section shall remain in effect until June 30, 1985; effective July 1, 1985, such amount shall be increased to ten thousand dollars.

The amounts of money referred to in this section shall be exclusive of interest, costs and attorney's fees. [1984 c

258 § 41; 1981 c 331 § 7; 1979 c 102 § 3; 1965 c 95 § 1; 1961 c 299 § 113.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Application, savings—1979 c 102: "Sections 2, 3, and 4 of this 1979 amendatory act upon taking effect shall apply to all actions filed on or after December 8, 1977. Any party to an action which is pending on the effective date of this act shall be permitted to amend any pleadings to reflect such increase in court jurisdiction: *Provided*, That nothing in this act shall affect the validity of judicial acts taken prior to its effective date." [1979 c 102 § 5.]

Severability—1979 c 102: "If any provision of this amendatory 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." [1979 c 102 § 6.]

Effective date—1979 c 102: "Sections 2 through 5 of this 1979 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1979." [1979 c 102 § 7.]

3.66.030 Restrictions on civil jurisdiction. The jurisdiction covered by RCW 3.66.020 shall not extend to the following civil actions:

(1) Actions involving title to real property;

(2) Actions for the foreclosure of a mortgage or enforcement of a lien on real estate;

(3) Actions for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction; and

(4) Actions against an executor or administrator as such. [1961 c 299 § 114.]

3.66.040 Venue—Civil action. (1) An action arising under RCW 3.66.020 (1), (2) except for the recovery of possession of personal property, (4), (6), (7), and (9) may be brought in any district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed or in which the defendant, or if there be more than one defendant, where some one of the defendants may be served with the notice and complaint in which latter case, however, the district where the defendant or defendants is or are served must be within the county in which the said defendant or defendants reside.

(2) An action arising under RCW 3.66.020(2) for the recovery of possession of personal property and RCW 3.66.020(8) shall be brought in the district in which the subject matter of the action or some part thereof is situated.

(3) An action arising under RCW 3.66.020 (3) and (5) shall be brought in the district in which the cause of action, or some part thereof arose.

(4) An action arising under RCW 3.66.020(2) for the recovery of damages for injuries to the person or for injury to personal property arising from a motor vehicle accident may be brought, at the plaintiff's option, either in the district in which the cause of action, or some part thereof, arose, or in the district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed.

(5) An action against a nonresident of this state may be brought in any district where service of process may be had, or in which the cause of action or some part thereof arose, or in which the plaintiff or one of them resides.

(6) For the purposes of chapters 3.30 through 3.74 RCW, the residence of a corporation defendant shall be deemed to be in any district where the corporation transacts business or has an office for the transaction of business or transacted business at the time the cause of action arose or where any person resides upon whom process may be served upon the corporation, unless herein otherwise provided. [1984 c 258 § 42; 1961 c 299 § 115.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.66.050 Transfer of proceedings. If a civil action is brought in the wrong district, the action may nevertheless be tried therein unless the defendant, at the time the defendant appears, requests a transfer of the action to the proper district. Upon such demand an order shall be entered transferring the action to the proper district and awarding the defendant a reasonable attorney's fee to be paid by the plaintiff. [1984 c 258 § 43; 1961 c 299 § 116.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.66.060 Criminal jurisdiction. The district court shall have jurisdiction: (1) Concurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective counties and of all violations of city ordinances. It shall in no event impose a greater punishment than a fine of five thousand dollars, or imprisonment for one year in the county or city jail as the case may be, or both such fine and imprisonment, unless otherwise expressly provided by statute. It may suspend and revoke vehicle operators' licenses in the cases provided by law; (2) to sit as a committing magistrate and conduct preliminary hearings in cases provided by law; (3) concurrent with the superior court of a proceeding to keep the peace in their respective counties; (4) concurrent with the superior court of all violations under Title 75 RCW; and (5) to hear and determine traffic infractions under chapter 46.63 RCW. [1984 c 258 § 44; 1983 1st ex.s. c 46 § 176; 1982 c 150 § 1; 1961 c 299 § 117.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

Violations under Title 75 RCW (Fisheries Code), concurrent jurisdiction: RCW 75.10.060.

3.66.065 Assessment of punishment. If a defendant is found guilty, a judge holding office pursuant to chapters 3.30 through 3.74 RCW, or chapter 35.20 RCW, and not the jury, shall assess punishment, notwithstanding the provisions of RCW 10.04.100. If the judge determines that the punishment authorized is inadequate compared to the gravity of the offense he or she may

order such defendant to enter recognizance to appear in the superior court of the county and may also recognize the witnesses and shall proceed as a committing magistrate. [1984 c 258 § 45; 1975 c 29 § 1; 1965 ex.s. c 110 § 7.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Sentence and judgment: Rules of court: CrRLJ 7.2.

3.66.067 Assessment of punishment—Deferral of sentence, probation—Withdrawal of plea and dismissal of charges. After a conviction, the court may defer sentencing the defendant and place the defendant on probation and prescribe the conditions thereof, but in no case shall it extend for more than two years from the date of conviction. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty and to enter a plea of not guilty, and the court may dismiss the charges. [1984 c 258 § 46; 1983 c 156 § 1; 1969 c 75 § 1.]

Rules of court: ER 410.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.66.068 Assessment of punishment—Suspension of sentence—Terms. For a period not to exceed two years after imposition of sentence, the court has continuing jurisdiction and authority to suspend the execution of all or any part of its sentence upon stated terms, including installment payment of fines. [1983 c 156 § 2; 1969 c 75 § 2.]

3.66.069 Assessment of punishment—Revocation of deferred or suspended sentence—Limitations—Termination of probation. Deferral of sentence and suspension of execution of sentence may be revoked if the defendant violates or fails to carry out any of the conditions of the deferral or suspension. Upon the revocation of the deferral or suspension, the court may impose the sentence previously suspended or any unexecuted portion thereof. In no case shall the court impose a sentence greater than the original sentence, with credit given for time served and money paid on fine and costs.

Any time before entering an order terminating probation, the court may revoke or modify its order suspending the imposition or execution of the sentence. Whenever the ends of justice will be served and when warranted by the reformation of the probationer, the court may terminate the period of probation and discharge the person so held. [1983 c 156 § 3; 1969 c 75 § 3.]

3.66.070 Venue—Criminal actions. All criminal actions shall be brought in the district where the alleged violation occurred: *Provided*, That (1) the prosecuting attorney may file felony cases in the district in which the county seat is located, (2) with the consent of the defendant criminal actions other than those arising out of violations of city ordinances may be brought in or transferred to the district in which the county seat is located,

and (3) if the alleged violation relates to driving, or being in actual physical control of, a motor vehicle while intoxicated and the alleged violation occurred within a judicial district which has been designated an enhanced enforcement district under RCW 2.56.110, the charges may be filed in that district or in a district within the same county which is adjacent to the district in which the alleged violation occurred. [1984 c 258 § 47; 1983 c 165 § 32; 1961 c 299 § 118.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

3.66.080 Criminal venue corrected. If a criminal action is commenced in an improper district under RCW 3.66.070, the court may of its own volition or at the request of either party order the case removed for trial to a proper district. [1984 c 258 § 48; 1961 c 299 § 119.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.66.090 Change of venue. A change of venue may be allowed upon motion:

(1) Where there is reason to believe that an impartial trial cannot be had in the district or municipal court in which the action was commenced; or

(2) Where the convenience of witnesses or the ends of justice would be forwarded by the change.

When such change is ordered, it shall be to the district court of another district in the same county, if any, otherwise to the district court of an adjacent district in another county: *Provided*, That where an affidavit of prejudice is filed against a judge of a municipal court the cause shall be transferred to another department of the municipal court, if one exists, otherwise to a judge pro tempore appointed in the manner prescribed by law. The court to which a case is removed on change of venue under this section shall have the same jurisdiction, either civil or criminal to hear and determine the case as the court from which the case was removed. [1984 c 258 § 49; 1967 c 241 § 1; 1961 c 299 § 120.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1967 c 241: "The provisions of this 1967 amendatory act shall apply only to those cities as to which the law requires that the judge be a qualified attorney." [1967 c 241 § 10.] For codification of 1967 c 241, see Codification Tables, Volume 0.

3.66.095 Removal of certain civil actions to superior court. See chapter 4.14 RCW.

3.66.100 Territorial jurisdiction—Process. (1) Every district judge having authority to hear a particular case may issue criminal process in and to any place in the state.

(2) Notwithstanding any provision in the civil rules to the contrary, every district judge having authority to hear a particular case may issue civil process, including writs of execution, attachment, garnishment, and replevin, in and to any place in the state. [1987 c 442 § 1101; 1984 c 258 § 701; 1961 c 299 § 121.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Issuance of process

infractions generally: RCW 7.80.020.

natural resource infractions: RCW 7.84.120.

traffic infractions: RCW 46.63.130.

3.66.110 Advertising authority to solemnize marriages is breach of judicial ethics. It shall be a breach of judicial ethics for any judge of any court of limited jurisdiction, as defined in RCW 3.02.010, to advertise in any manner that he or she is authorized to solemnize marriages. Any violation of this section shall be grounds for forfeiture of office. [1983 c 186 § 3; 1961 c 299 § 122.]

Chapter 3.70

MAGISTRATES' ASSOCIATION

Sections

3.70.010	Magistrates' association established.
3.70.020	Meetings.
3.70.030	Expenses of members.
3.70.040	Powers and duties.

3.70.010 Magistrates' association established. There is established in the state an association, to be known as the Washington state magistrates' association, membership in which shall include all duly elected or appointed and qualified judges of courts of limited jurisdiction, including but not limited to district judges and municipal court judges. [1987 c 3 § 2; 1984 c 258 § 50; 1961 c 299 § 123.]

Severability—1987 c 3: See note following RCW 3.46.020.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.70.020 Meetings. The first meeting of the Washington state magistrates' association shall be held at the next regular meeting of the present organization after June 7, 1961 to be held during the month of August or September, 1961, at which meeting those judges of courts of limited jurisdiction, as provided in RCW 3.70.010, attending shall temporarily organize themselves for the purpose of adopting a Constitution and bylaws and may either adopt or amend the present Constitution and bylaws of the Washington state magistrates' association or provide for bylaws only, electing officers as provided therein and doing all things necessary and proper to formally establish a permanent Washington state magistrates' association, after which meeting the association may meet each year during the month of August or September, beginning in 1962. Meetings shall be held in the state of Washington. [1984 c 258 § 51; 1961 c 299 § 124.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.70.030 Expenses of members. For attendance at the annual meetings of the association, beginning in

1962 and thereafter, a judge of a court of limited jurisdiction shall be entitled to receive reimbursement for judge's reasonable travel expenses as provided in RCW 43.03.050 and 43.03.060 from the county or city responsible for the operating cost of the court over which he or she presides while attending meetings of the association. The per diem and transportation or mileage allowance authorized by this section shall not be paid to any judge for more than five days in any one calendar year. [1984 c 258 § 52; 1961 c 299 § 125.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.70.040 Powers and duties. The Washington state magistrates' association shall:

(1) Continuously survey and study the operation of the courts served by its membership, the volume and condition of business of such courts, the methods of procedure therein, the work accomplished, and the character of the results;

(2) Promulgate suggested rules for the administration of the courts of limited jurisdiction not inconsistent with the law or rules of the supreme court relating to such courts;

(3) Report annually to the supreme court as well as the governor and the legislature on the condition of business in the courts of limited jurisdiction, including the association's recommendations as to needed changes in the organization, operation, judicial procedure, and laws or statutes implemented or enforced in these courts. [1984 c 258 § 53; 1980 c 162 § 10; 1961 c 299 § 126.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Severability—1980 c 162: See note following RCW 3.02.010.

Chapter 3.74 MISCELLANEOUS

Sections

3.74.010	District judges to be members of state retirement system.
3.74.020	Full time district judges ineligible for any other office or public employment than judicial.
3.74.030	Mandatory retirement for district judges.
3.74.900	Transfer of proceedings—1961 c 299.
3.74.930	Severability—1961 c 299.
3.74.931	Severability—1965 ex.s. c 110.
3.74.932	Severability—1967 c 241.
3.74.940	Validation—1965 ex.s. c 110.

3.74.010 District judges to be members of state retirement system. All district judges under chapters 3.30 through 3.74 RCW shall remain members of the state retirement system. [1984 c 258 § 54; 1961 c 299 § 130.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.74.020 Full time district judges ineligible for any other office or public employment than judicial. The full time judges of the district court shall be ineligible to any other office, or public employment than a judicial office

or employment during the term for which they shall have been elected. [1984 c 258 § 55; 1961 c 299 § 131.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.74.030 Mandatory retirement for district judges. A district judge shall retire from judicial office at the end of the calendar year in which he or she has attained the age of seventy-five years. This provision shall not affect the term to which any such judge shall have been elected or appointed prior to August 11, 1969. [1984 c 258 § 56; 1969 ex.s. c 6 § 1.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

3.74.900 Transfer of proceedings—1961 c 299. All cases, proceedings and matters pending before justice courts, police courts, municipal courts and night courts shall be transferred to the appropriate court established by chapters 3.30 through 3.74 RCW, together with all files, records and proceedings relating to such cases. Chapters 3.30 through 3.74 RCW shall not affect any appeal from any municipal court, police court, justice court or night court, but such appeal shall be conducted and concluded as if chapters 3.30 through 3.74 RCW had not been enacted, except that if remanded from the superior court the superseding court shall have the authority and power to forfeit bail or bond or impose sentence thereon. [1961 c 299 § 127.]

3.74.930 Severability—1961 c 299. 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. [1961 c 299 § 132.]

3.74.931 Severability—1965 ex.s. c 110. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1965 ex.s. c 110 § 8.]

3.74.932 Severability—1967 c 241. If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1967 c 241 § 11.]

3.74.940 Validation—1965 ex.s. c 110. Any prior action by the county commissioners of any county of the first, second, third, fourth, fifth, sixth, seventh, eighth or ninth class to make the provisions of chapters 3.30 through 3.74 RCW applicable to their county and the organization of any justice court as a result thereof, and all other things and proceedings done or taken by such county or by their respective officers acting under or in pursuance to such prior action and organization are

hereby declared legal and valid and of full force and effect. [1965 ex.s. c 110 § 4.]

Title 4

CIVIL PROCEDURE

Chapters

- 4.04 Rule of decision—Form of actions.
- 4.08 Parties to actions.
- 4.12 Venue—Jurisdiction.
- 4.14 Removal of certain actions to superior court.
- 4.16 Limitation of actions.
- 4.18 Uniform conflict of laws—Limitations act.
- 4.20 Survival of actions.
- 4.22 Contributory fault—Effect—Imputation—Contribution—Settlement agreements.
- 4.24 Special rights of action and special immunities.
- 4.28 Commencement of actions.
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- 4.44 Trial.
- 4.48 Trial before referee.
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Chapter 4.04

RULE OF DECISION—FORM OF ACTIONS

Sections

- 4.04.010 Extent to which common law prevails.

General definitions: Chapter 1.16 RCW.

Rules of construction: Chapter 1.12 RCW.

4.04.010 Extent to which common law prevails. The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state. [1891 c 17 § 1; Code 1881 § 1; 1877 p 3 § 1; 1862 p 83 § 1; RRS § 143. Formerly RCW 1.12.030.]

Chapter 4.08

PARTIES TO ACTIONS

Sections

- 4.08.030 Either husband or wife may sue for community—Necessary parties.
- 4.08.040 When husband and wife may join, defend.
- 4.08.050 Guardian ad litem for infant.
- 4.08.060 Guardian ad litem for insane person.
- 4.08.080 Actions on assigned choses in action.
- 4.08.100 Actions to recover purchase money on land—Final judgment.
- 4.08.110 Actions by public corporations.
- 4.08.120 Actions against public corporations.
- 4.08.140 New party entitled to service of summons.

4.08.150	Substitution and interpleader.
4.08.160	Actions to determine conflicting claims to property.
4.08.170	Actions to determine conflicting claims to property— Disclaimer and deposit in court.
4.08.180	Actions to determine conflicting claims to property— Trial of issue.
4.08.210	Physician, dentist and pharmacist members of committees to evaluate credentials and qualifications of physicians, dentists and pharmacists—Immunity from civil suit.

4.08.030 Either husband or wife may sue for community—Necessary parties. Either husband or wife may sue on behalf of the community: *Provided*, That

(1) When the action is for personal injuries, the spouse having sustained personal injuries is a necessary party;

(2) When the action is for compensation for services rendered, the spouse having rendered the services is a necessary party. [1972 ex.s. c 108 § 1; Code 1881 § 6; 1877 p 4 § 6; 1875 p 4 § 2; 1869 p 4 § 6; 1854 p 131 § 5; RRS § 181.]

4.08.040 When husband and wife may join, defend. Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them.

If a husband and wife be sued together, either or both spouses may defend, and if one spouse neglects to defend, the other spouse may defend for the nonacting spouse also. And each spouse may defend in all cases in which he or she is interested, whether that spouse is sued with the other spouse or not. [1972 ex.s. c 108 § 2; Code 1881 § 7; 1877 p 4 § 7; 1875 p 4 § 3; 1854 p 219 § 492; RRS § 182.]

4.08.050 Guardian ad litem for infant. When an infant is a party he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and applies within thirty days after the service of the summons; if he be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant. [1891 c 30 § 1; Code 1881 § 12; 1854 p 132 §§ 6, 7; RRS § 187.]

4.08.060 Guardian ad litem for insane person. When an insane person is a party to an action in the superior courts he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows:

(1) When the insane person is plaintiff, upon the application of a relative or friend of the insane person.

(2) When the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within thirty days after the service of summons if served in the state of Washington, and if served out of the state or service is made by publication, then such application shall be made within sixty days after the first publication of summons or within sixty days after the service out of the state. If no such application be made within the time above limited, application may be made by any party to the action. [1899 c 91 § 1; RRS § 188.]

4.08.080 Actions on assigned choses in action. Any assignee or assignees of any judgment, bond, specialty, book account, or other chose in action, for the payment of money, by assignment in writing, signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligor or obligors, debtor or debtors, named in such judgment, bond, specialty, book account, or other chose in action, notwithstanding the assignor may have an interest in the thing assigned: *Provided*, That any debtor may plead in defense as many defenses, counterclaims and offsets, whether they be such as have heretofore been denominated legal or equitable, or both, if held by him against the original owner, against the debt assigned, save that no counterclaim or offset shall be pleaded against negotiable paper assigned before due, and where the holder thereof has purchased the same in good faith and for value, and is the owner of all interest therein. [1927 c 87 § 1; 1891 c 30 § 2; Code 1881 § 15; 1879 p 122 § 1; 1854 p 131 § 3; RRS § 191.]

4.08.100 Actions to recover purchase money on land—Final judgment. In any action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court in a final judgment may order the interest of purchaser to be sold or transferred to the plaintiff upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser, in case a sale be ordered. [Code 1881 § 19; 1877 p 6 § 19; 1854 p 219 § 490; RRS § 195.]

4.08.110 Actions by public corporations. An action at law may be maintained by any county, incorporated town, school district or other public corporation of like character, in its corporate name, and upon a cause of action accruing to it, in its corporate character and not otherwise, in any of the following cases:

(1) Upon a contract made with such public corporation;

(2) Upon a liability prescribed by law in favor of such public corporation;

(3) To recover a penalty or forfeiture given to such public corporation;

(4) To recover damages for an injury to the corporate rights or property of such public corporation. [1953 c 118 § 1. Prior: Code 1881 § 661; 1869 p 154 § 601; RRS § 950.]

4.08.120 Actions against public corporations. An action may be maintained against a county or other of the public corporations mentioned or described in RCW 4.08.110, either upon a contract made by such county, or other public corporation in its corporate character and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation. [1953 c 118 § 2. Prior: Code 1881 § 662; 1869 p 154 § 602; RRS § 951.]

4.08.140 New party entitled to service of summons. When a new party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same summons to be served in the same manner as required for defendants in the commencement of an action. [1957 c 7 § 1. Prior: Code 1881 §§ 21, 742; 1877 pp 6 and 151 §§ 21, 747; 1873 pp 7 and 176 §§ 21, 682; 1869 pp 6 and 172 §§ 21, 684; 1863 p 194 § 524; 1860 p 99 § 477; 1854 p 219 § 485; RRS § 197.]

Rules of court: Cf. CR 3; CR 5.

4.08.150 Substitution and interpleader. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may make the order. [Code 1881 § 22; 1877 p 6 § 22; 1869 p 7 § 22; 1854 p 132 § 12; RRS § 198.]

Rules of court: Interpleader—CR 22; Substitution—CR 25.

4.08.160 Actions to determine conflicting claims to property. Anyone having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on, such property, money or indebtedness, or any part thereof, may commence an action in the superior court against all or any of such persons, and have their rights, claims, interest or liens adjudged, determined and adjusted in such action. [1890 p 93 § 1; RRS § 199.]

4.08.170 Actions to determine conflicting claims to property—Disclaimer and deposit in court. In any action commenced under RCW 4.08.160, the plaintiff may disclaim any interest in the money, property or indebtedness, and deposit with the clerk of the court the full

amount of such money or indebtedness, or other property, and he shall not be liable for any costs accruing in said action. And the clerks of the various courts shall receive and file such complaint, and all other officers shall execute the necessary processes to carry out the purposes of this section, and RCW 4.08.160 and 4.08.180, free from all charge to said plaintiff, and the court, in its discretion, shall determine the liability for costs of the action. [1890 p 93 § 2; RRS § 200.]

4.08.180 Actions to determine conflicting claims to property—Trial of issue. Either of the defendants may set up or show any claim or lien he may have to such property, money or indebtedness, or any part thereof, and the superior right, title or lien, whether legal or equitable, shall prevail.

The court or judge thereof may make all necessary orders, during the pendency of said action, for the preservation and protection of the rights, interests or liens of the several parties. [1890 p 94 § 3; RRS § 201.]

4.08.210 Physician, dentist and pharmacist members of committees to evaluate credentials and qualifications of physicians, dentists and pharmacists—Immunity from civil suit. See RCW 4.24.240.

Chapter 4.12

VENUE—JURISDICTION

Sections	
4.12.010	Actions to be commenced where subject is situated.
4.12.020	Actions to be tried in county where cause arose.
4.12.024	Actions involving probate or trust matters.
4.12.025	Actions to be brought where defendant resides— Residence of corporations—Optional venue of actions against corporations.
4.12.030	Grounds authorizing change of venue.
4.12.040	Prejudice of judge, transfer to another department, visiting judge—Change of venue generally, criminal cases.
4.12.050	Affidavit of prejudice.
4.12.060	To what county venue may be changed—Limitation on number of changes.
4.12.070	Change to newly created county.
4.12.080	Change by stipulation.
4.12.090	Transmission of record on change of venue—Costs, attorney's fee.
4.12.100	Transcript of record entries.
4.12.110	Effect of neglect of moving party.
4.12.120	Change deemed complete, when.

Rules of court: Venue—CR 82.

Actions against nonresident motorist: RCW 46.64.040.

4.12.010 Actions to be commenced where subject is situated. Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated:

(1) For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

(2) All questions involving the rights to the possession or title to any specific article of personal property, in which last mentioned class of cases, damages may also

be awarded for the detention and for injury to such personal property. [Code 1881 § 47; 1877 p 11 § 48; 1869 p 12 § 48; 1860 p 7 § 15; 1854 p 133 § 13; RRS § 204.]

4.12.020 Actions to be tried in county where cause arose. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose:

(1) For the recovery of a penalty or forfeiture imposed by statute;

(2) Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, shall do anything touching the duties of such officer;

(3) For the recovery of damages arising from a motor vehicle accident; but in a cause arising because of motor vehicle accident plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action. [1941 c 81 § 1; Code 1881 § 48; 1877 p 11 § 49; 1869 p 12 § 49; 1860 p 7 § 16; 1854 p 133 § 14; Rem. Supp. 1941 § 205.]

4.12.024 Actions involving probate or trust matters. See RCW 11.96.050.

4.12.025 Actions to be brought where defendant resides—Residence of corporations—Optional venue of actions against corporations. (1) An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.

(2) The venue of any action brought against a corporation, at the option of the plaintiff, shall be: (a) In the county where the tort was committed; (b) in the county where the work was performed for said corporation; (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence. [1985 c 68 § 2; 1983 c 31 § 1; 1965 c 53 § 168; 1927 c 173 § 1; RRS § 205-1. Prior: 1909 c 42 § 1; Code 1881 § 49; 1877 p 11 § 50; 1869 p 13 § 50; 1860 p 101 § 488; 1854 p 220 § 494.]

Severability—1965 c 53: See RCW 23A.98.020.

4.12.030 Grounds authorizing change of venue. The court may, on motion, in the following cases, change the place of trial when it appears by affidavit, or other satisfactory proof:

(1) That the county designated in the complaint is not the proper county; or,

(2) That there is reason to believe that an impartial trial cannot be had therein; or,

(3) That the convenience of witnesses or the ends of justice would be forwarded by the change; or,

(4) That from any cause the judge is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity, within the third degree; when he has been of counsel for either party in the action or proceeding. [Code 1881 § 51; 1877 p 12 § 52; 1875 p 6 § 8; 1869 p 13 § 52; 1854 p 134 § 16; RRS § 209.]

4.12.040 Prejudice of judge, transfer to another department, visiting judge—Change of venue generally, criminal cases. No judge of a superior court of the state of Washington shall sit to hear or try any action or proceeding when it shall be established as hereinafter provided that said judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge in judicial districts where there is more than one judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court. In all judicial districts where there is only one judge, a certified copy of the motion and affidavit filed in the cause shall be transmitted by the clerk of the superior court to the clerk of the supreme court or the administrator for the court, and the chief justice of the supreme court shall direct a visiting judge to hear and try such action as soon as convenient and practical.

The presiding judge in judicial districts where there is more than one judge, or the chief justice of the supreme court for judicial districts where there is only one judge, may send a case for trial to another court if the convenience of witnesses or the ends of justice will not be interfered with by such a course and the action is of such a character that a change of venue may be ordered: *Provided*, That in criminal prosecutions the case shall not be sent for trial to any court outside the county unless the accused shall waive his right to a trial by a jury of the county in which the offense is alleged to have been committed. [1961 c 303 § 1; 1927 c 145 § 1; 1911 c 121 § 1; RRS § 209-1.]

Criminal proceedings, venue and jurisdiction: Chapter 10.25 RCW.

4.12.050 Affidavit of prejudice. Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge: *Provided*, That such motion and affidavit is filed and called to the attention of the judge before he shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party making the affidavit has been given notice, and before the judge presiding has made

any order or ruling involving discretion, but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso; and in any event, in counties where there is but one resident judge, such motion and affidavit shall be filed not later than the day on which the case is called to be set for trial: *And provided further*, That notwithstanding the filing of such motion and affidavit, if the parties shall, by stipulation in writing agree, such judge may hear argument and rule upon any preliminary motions, demurrers, or other matter thereafter presented: *And provided further*, That no party or attorney shall be permitted to make more than one such application in any action or proceeding under this section and RCW 4.12.040. [1941 c 148 § 1; 1927 c 145 § 2; 1911 c 121 § 2; Rem. Supp. 1941 § 209–2.]

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

4.12.060 To what county venue may be changed—Limitation on number of changes. If the motion for a change of the place of trial be allowed, the change shall be made to the county where the action ought to have been commenced, if it be for the cause mentioned in RCW 4.12.030(1), and in other cases to the most convenient county where the cause alleged does not exist. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed. [Code 1881 § 52; 1877 p 12 § 53; 1869 p 14 § 53; RRS § 210.]

4.12.070 Change to newly created county. Any party in a civil action pending in the superior court in a county out of whose limits a new county, in whole or in part, has been created, may file with the clerk of such superior court an affidavit setting forth that he is a resident of such newly created county, and that the venue of such action is transitory, or that the venue of such action is local, and that it ought properly to be tried in such newly created county; and thereupon the clerk shall make out a transcript of the proceedings already had in such action in such superior court, and certify it under the seal of the court, and transmit such transcript, together with the papers on file in his office connected with such action, to the clerk of the superior court of such newly created county, wherein it shall be proceeded with as in other cases. [1891 c 33 § 2; Code 1881 § 53; 1877 p 12 § 54; 1869 p 14 § 54; 1854 p 377 § 2; RRS § 211.]

4.12.080 Change by stipulation. Notwithstanding the provisions of RCW 4.12.030 all the parties to the action by stipulation in writing or by consent in open court entered in the records may agree that the place of trial be changed to any county of the state, and thereupon the

court must order the change agreed upon. [Code 1881 § 55; 1877 p 13 § 56; RRS § 216.]

4.12.090 Transmission of record on change of venue—Costs, attorney's fee. (1) When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleadings and papers therein to the court to which it is transferred. The costs and fees thereof and of filing the papers anew must be paid by the party at whose instance the order was made, except in the cases mentioned in RCW 4.12.030(1), in which case the plaintiff shall pay costs of transfer and, in addition thereto, if the court finds that the plaintiff could have determined the county of proper venue with reasonable diligence, it shall order the plaintiff to pay the reasonable attorney's fee of the defendant for the changing of venue to the proper county. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

(2) In acting on any motion for dismissal without prejudice in a case where a motion for change of venue under subsection (1) of this section has been made, the court shall, if it determines the motion for change of venue proper, determine the amount of attorney's fee properly to be awarded to defendant and, if the action be dismissed, the attorney's fee shall be a setoff against any claim subsequently brought on the same cause of action. [1969 ex.s. c 144 § 1; Code 1881 § 54; 1877 p 12 § 55; 1875 p 7 § 10; 1869 p 14 §§ 55, 56; RRS § 215.]

4.12.100 Transcript of record entries. The clerk of the court must also transmit with the original papers where an order is made changing the place of trial, a certified transcript of all record entries up to and including the order for such change. [Code 1881 § 58; 1877 p 13 § 59; RRS § 219.]

4.12.110 Effect of neglect of moving party. If such papers be not transmitted to the clerk of the proper court within the time prescribed in the order allowing the change, and the delay be caused by the act or omission of the party procuring the change, the adverse party, on motion to the court or judge thereof, may have the order vacated, and thereafter no other change of the place of trial shall be allowed to such party. [Code 1881 § 56; 1877 p 13 § 57; 1869 p 15 § 57; 1854 p 135 § 21; RRS § 217.]

4.12.120 Change deemed complete, when. Upon the filing of the papers with the clerk of the court to which the cause is transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced in that court. [Code 1881 § 57; 1877 p 13 § 58; 1869 p 15 § 58; 1854 p 135 § 22; RRS § 218.]

Chapter 4.14

REMOVAL OF CERTAIN ACTIONS TO SUPERIOR COURT

Sections

- 4.14.010 Removal of certain actions from justice court to superior court authorized—Grounds—Joint claims or actions.
- 4.14.020 Petition for removal—Contents—Filing—Notice.
- 4.14.030 Orders and process upon removal—Remand of cases improvidently removed.
- 4.14.040 Attached property—Custody.

4.14.010 Removal of certain actions from justice court to superior court authorized—Grounds—Joint claims or actions. Whenever the removal of such action to superior court is required in order to acquire jurisdiction over a third party defendant, who is or may be liable to the defendant for all or part of the judgment and resides outside the county wherein the action was commenced, any civil action which could have been brought in superior court may, if commenced in justice court, be removed by the defendant or defendants to the superior court for the county where such action is pending if the court determines that there are reasonable grounds to believe that a third party may be liable to the plaintiff and issues an order so stating.

Whenever a separate or independent claim or cause of action which would be removable if sued upon alone is joined with one or more otherwise nonremovable claims or causes of action, the entire case may be removed and the superior court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction. [1967 ex.s. c 46 § 4.]

4.14.020 Petition for removal—Contents—Filing—Notice. (1) A defendant or defendants desiring to remove any civil action from a justice court as authorized by RCW 4.14.010 shall file in the superior court in the county where such action is pending, a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(2) The petition for removal of a civil action or proceeding shall be filed within twenty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within twenty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper, including the defendant's answer, from which it may first be ascertained that the case is or has become removable.

(3) Promptly after the filing of such petition the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the justice court, which shall effect the removal and the justice court shall proceed no further unless and until the case is remanded. [1967 ex.s. c 46 § 5.]

4.14.030 Orders and process upon removal—Remand of cases improvidently removed. In any case removed from justice court under the provisions of this chapter, the superior court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the justice court or otherwise.

If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the superior court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by the clerk of the superior court to the justice court. The justice court may thereupon proceed with such case. [1967 ex.s. c 46 § 6.]

4.14.040 Attached property—Custody. Whenever any action is removed from a justice court to a superior court under the provisions of this chapter, any attachment or sequestration of the property of the defendant in such action in the justice court shall remain in the custody of the sheriff to answer the final judgment or decree in the same manner as would have been held to answer had the cause been brought in the superior court originally. [1967 ex.s. c 46 § 7.]

Chapter 4.16

LIMITATION OF ACTIONS

Sections

- 4.16.020 Actions to be commenced within ten years.
- 4.16.030 Actions to foreclose special assessments.
- 4.16.040 Actions limited to six years.
- 4.16.050 Action on irrigation or drainage district warrant.
- 4.16.060 Action on irrigation district bonds.
- 4.16.070 Actions limited to five years.
- 4.16.080 Actions limited to three years.
- 4.16.085 Actions based on product defects, etc.
- 4.16.090 Action to cancel tax deed.
- 4.16.100 Actions limited to two years.
- 4.16.110 Actions limited to one year.
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- 4.16.160 Application of limitations to actions by state, counties, municipalities.
- 4.16.170 Tolling of statute—Actions, when deemed commenced or not commenced.
- 4.16.180 Statute tolled by absence from state, concealment, etc.
- 4.16.190 Statute tolled by personal disability.
- 4.16.200 Statute tolled by death.
- 4.16.210 Statute tolled—By war as to enemy alien.
- 4.16.220 Statute tolled—As to person in military service of United States.
- 4.16.230 Statute tolled by judicial proceedings.
- 4.16.240 Effect of reversal of judgment on appeal.
- 4.16.250 Disability must exist when right of action accrued.
- 4.16.260 Coexisting disabilities.
- 4.16.270 Effect of partial payment.
- 4.16.280 New promise must be in writing.
- 4.16.290 Foreign statutes of limitation, how applied.
- 4.16.300 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property.
- 4.16.310 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Accrual and limitations of actions or claims.

- 4.16.320 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Construction.
- 4.16.350 Actions for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc.
- 4.16.360 Application of chapter to paternity actions.
- 4.16.370 Actions against personal representative or trustee for breach of fiduciary duties—Statute of limitations.

Claims against

counties: RCW 36.32.330; chapter 36.45 RCW.
 estates: RCW 11.40.060.
 the state: RCW 4.92.050.

Criminal procedure, limitation of actions: RCW 9A.04.080.

Garnishment writ, dismissal after one year: RCW 6.27.310.

Lawyer discipline: Rules of court—RLD 12.10.

Product liability actions: RCW 7.72.060(3).

Tax liability, action by another state, limitation: RCW 4.24.140.

Uniform conflict of laws—Limitations act: Chapter 4.18 RCW.

Usury, business organizations engaged in lending or real estate development cannot bring action: RCW 19.52.080.

4.16.020 Actions to be commenced within ten years. The period prescribed for the commencement of actions shall be as follows:

Within ten years:

(1) Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.

(2) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States. [1984 c 76 § 1; 1980 c 105 § 1; Code 1881 § 26; 1877 p 7 § 26; 1854 p 363 § 2; RRS § 156.]

Application—1980 c 105: "This act shall apply to all judgments which have not expired before June 12, 1980." [1980 c 105 § 7.] This applies to the amendments to RCW 4.16.020, 4.16.040, 4.56.190, 6.04.010, 6.32.010 and 6.32.015.

Adverse possession

limitation tolled when personal disability: RCW 7.28.090.
recovery of realty, limitation: RCW 7.28.050.

4.16.030 Actions to foreclose special assessments. An action to collect any special assessment for local improvements of any kind against any person, corporation or property whatsoever, or to enforce any lien for any special assessment for local improvements of any kind, whether said action be brought by a municipal corporation or by the holder of any delinquency certificate, or by any other person having the right to bring such an action, shall be commenced within ten years after such assessment shall have become delinquent, or due, or within ten years after the last installment of any such special assessment shall have become delinquent or due when said special assessment is payable in installments. [1907 c 182 § 1; Rem. Supp. 1945 § 10322C-1.]

Actions brought by code city: RCW 35A.21.200.

Actions to foreclose special assessments in cities or towns: RCW 35.50.050.

4.16.040 Actions limited to six years. Within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

(2) An action for the rents and profits or for the use and occupation of real estate. [1980 c 105 § 2; 1927 c 137 § 1; Code 1881 § 27; 1854 p 363 § 3; RRS § 157.]

Application—1980 c 105: See note following RCW 4.16.020.

4.16.050 Action on irrigation or drainage district warrant. Action to enforce any right arising out of the issuance or ownership of any warrant of an irrigation or drainage district organized under the laws of this state, must be brought within six years from and after the date of the issuance of such warrant. [1931 c 75 § 1; RRS § 157-1.]

Reviser's note: Transitional proviso omitted. Such proviso reads: "Provided, That this section shall not apply to actions not otherwise barred on warrants heretofore issued, if the same shall be commenced within one year after the taking effect of this act".

4.16.060 Action on irrigation district bonds. No action against any irrigation district organized under the laws of this state, or its officers, to enforce any right or claim arising out of the issuance or ownership of any negotiable bond, payable on a day certain, of the irrigation district, where such district is under contract with the United States, or any department or agency thereof, to sell its lands and its right, title and interest in its distribution canals and pipelines and its water rights, thereby necessitating the discontinuance of the district operation upon fulfillment of the contract, shall be brought after a period of six years from and after the maturity date of such bond. [1939 c 57 § 1; RRS § 157-2.]

Reviser's note: Transitional proviso omitted. Such proviso reads: "Provided, That this section shall not apply to actions not otherwise barred on such irrigation district bonds heretofore issued, if the same shall be commenced within six (6) months after the taking effect of this act".

4.16.070 Actions limited to five years. No action for the recovery of any real estate sold by an executor or administrator under the laws of this state shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale, and no action for any estate sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless commenced within five years next after the termination of the guardianship, except that minors, and other persons under legal disability to sue at the time when the right of action first accrued, may commence such action at any time within three years after the removal of the disability. [1890 p 81 § 1; RRS § 158. Prior: 1863 p 245 §§ 251, 252; 1860 p 205 §§ 217, 218; 1854 p 290 §§ 137, 138.]

Infants: Chapter 26.28 RCW.

Probate

actions by and against executors, etc.: Chapter 11.48 RCW.
guardianship: Chapters 11.88, 11.92 RCW.

sales and mortgages of real estate: Chapter 11.56 RCW; RCW 11.60.010.

Sales not voided by irregularities: RCW 11.56.115.

4.16.080 Actions limited to three years. Within three years:

- (1) An action for waste or trespass upon real property;
- (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;
- (3) An action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;
- (4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;
- (5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;
- (6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: *Provided, however,* The cause of action for such misappropriation, penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.
- (7) An action for seduction and breach of promise to marry. [1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

Reviser's note: Transitional proviso omitted from subsection (6). Such proviso reads: "*Provided, further,* That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective;"

4.16.085 Actions based on product defects, etc. See RCW 7.72.060(3).

4.16.090 Action to cancel tax deed. Actions to set aside or cancel any deed heretofore or hereafter issued by any county treasurer after and upon the sale of lands for general, state, county or municipal taxes, or upon the sale of lands acquired by any county on foreclosure of general, state, county or municipal taxes, or for the recovery of any lands so sold, must be brought within three years from and after the date of the issuance of

such treasurer's deed. [1949 c 74 § 1; 1907 c 173 § 1; Rem. Supp. 1949 § 162.]

Reviser's note: Transitional proviso omitted. Such proviso reads: "*Provided,* This act shall not apply to actions not otherwise barred on deeds heretofore issued if the same be commenced within one year after the passage of this act".

4.16.100 Actions limited to two years. Within two years:

- (1) An action for libel, slander, assault, assault and battery, or false imprisonment.
- (2) An action upon a statute for a forfeiture or penalty to the state. [Code 1881 § 29; 1877 p 8 § 29; 1869 p 9 § 29; 1854 p 363 § 5; RRS § 160.]

Limitation of action for recovery of transportation charges: RCW 81.28.270.

4.16.110 Actions limited to one year. Within one year an action shall be brought against a sheriff, or other officer for the escape of a prisoner arrested or imprisoned on civil process. [1985 c 11 § 2. Prior: 1984 c 149 § 1; Code 1881 § 30; 1877 p 8 § 30; 1869 p 9 § 30; 1854 p 364 § 5; RRS § 161.]

Purpose—1985 c 11: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 11 § 1.]

Severability—1985 c 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." [1985 c 11 § 4.]

Reviser's note: 1985 c 11 reenacted RCW 4.16.110 and 4.16.370 without amendment.

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Sheriff, civil liability: RCW 36.28.150.

4.16.112 Actions for contribution between joint tortfeasors. See RCW 4.22.050.

4.16.115 Special provisions for action on penalty. An action upon a statute for a penalty given in whole or in part to the person who may prosecute for the same, shall be commenced within three years [one year] after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years after the commission of the offense in behalf of the state by the prosecuting attorney of the county, where said offense was committed. [1877 p 9 § 31; 1854 p 364 § 6; RRS § 163. Formerly RCW 4.16.140. Cf. Code 1881 § 31.]

Reviser's note: "one year" appeared in Laws of 1854 and 1877; "three years" appears in Code of 1881.

4.16.130 Actions for relief not otherwise provided for. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued. [Code 1881 § 33; 1877 p 9 § 32; 1854 p 364 § 7; RRS § 165.]

Limitation of action to recover taxes paid: RCW 84.68.060.

4.16.150 Action on mutual open accounts. In an action brought to recover a balance due upon a mutual open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side, but whenever a period of more than one year shall have elapsed between any of a series of items or demands, they are not to be deemed such an account. [Code 1881 § 34; 1877 p 9 § 33; 1869 p 10 § 33; 1854 p 364 § 8; RRS § 166.]

4.16.160 Application of limitations to actions by state, counties, municipalities. The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: *Provided*, That, except as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: *And further provided*, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute. [1986 c 305 § 701; 1955 c 43 § 2. Prior: 1903 c 24 § 1; Code 1881 § 35; 1873 p 10 §§ 34, 35; 1869 p 10 §§ 34, 35; 1854 p 364 § 9; RRS § 167, part.]

Preamble—1986 c 305: "Tort law in this state has generally been developed by the courts on a case-by-case basis. While this process has resulted in some significant changes in the law, including amelioration of the harshness of many common law doctrines, the legislature has periodically intervened in order to bring about needed reforms. The purpose of this chapter is to enact further reforms in order to create a more equitable distribution of the cost and risk of injury and increase the availability and affordability of insurance.

The legislature finds that counties, cities, and other governmental entities are faced with increased exposure to lawsuits and awards and dramatic increases in the cost of insurance coverage. These escalating costs ultimately affect the public through higher taxes, loss of essential services, and loss of the protection provided by adequate insurance. In order to improve the availability and affordability of quality governmental services, comprehensive reform is necessary.

The legislature also finds comparable cost increases in professional liability insurance. Escalating malpractice insurance premiums discourage physicians and other health care providers from initiating or continuing their practice or offering needed services to the public and contribute to the rising costs of consumer health care. Other professionals, such as architects and engineers, face similar difficult choices, financial instability, and unlimited risk in providing services to the public.

The legislature also finds that general liability insurance is becoming unavailable or unaffordable to many businesses, individuals, and nonprofit organizations in amounts sufficient to cover potential losses. High premiums have discouraged socially and economically desirable activities and encourage many to go without adequate insurance coverage.

Therefore, it is the intent of the legislature to reduce costs associated with the tort system, while assuring that adequate and appropriate compensation for persons injured through the fault of others is available." [1986 c 305 § 100.]

Report to legislature—1986 c 305: "The insurance commissioner shall submit a report to the legislature by January 1, 1991, on the effects of this act on insurance rates and the availability of insurance

coverage and the impact on the civil justice system." [1986 c 305 § 909.]

Application—1986 c 305: "Except as provided in sections 202 and 601 of this act and except for section 904 of this act, this act applies to all actions filed on or after August 1, 1986." [1986 c 305 § 910.]

Severability—1986 c 305: "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." [1986 c 305 § 911.]

4.16.170 Tolling of statute—Actions, when deemed commenced or not commenced. For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. If the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations. [1971 ex.s. c 131 § 1; 1955 c 43 § 3. Prior: 1903 c 24 § 1; Code 1881 § 35; 1873 p 10 § 35; 1869 p 10 § 35; RRS § 167, part.]

4.16.180 Statute tolled by absence from state, concealment, etc. If the cause of action shall accrue against any person who is a nonresident of this state, or who is a resident of this state and shall be out of the state, or concealed therein, such action may be commenced within the terms herein respectively limited after the coming, or return of such person into the state, or after the end of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this state, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limit for the commencement of such action. [1927 c 132 § 1; Code 1881 § 36; 1854 p 364 § 10; RRS § 168.]

4.16.190 Statute tolled by personal disability. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action. [1977 ex.s. c 80 § 2; 1971 ex.s. c 292 § 74; Code 1881 § 37; 1877 p 9 § 38; 1869 p 10 § 38; 1861 p 61 § 1; 1854 p 364 § 11; RRS § 169.]

Purpose—Intent—1977 ex.s. c 80: "It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and

assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term "insanity" be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter 11.88 RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability." [1977 ex.s. c 80 § 1.]

Severability—1977 ex.s. c 80: "If any provision of this 1977 amendatory 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." [1977 ex.s. c 80 § 76.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Adverse possession, personal disability, limitation tolled: RCW 7.28.090.

4.16.200 Statute tolled by death. If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives after the expiration of the time and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time and within one year after the issuing of letters testamentary or of administration. [Code 1881 § 38; 1877 p 9 § 38; 1854 p 364 § 12; RRS § 170.]

Decedents

liability for debts: RCW 11.04.270.

suit on rejected claims: RCW 11.40.060.

4.16.210 Statute tolled—By war as to enemy alien. When a person shall be an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action. [1941 c 174 § 1, part; Code 1881 § 39; 1854 p 365 § 13; Rem. Supp. 1941 § 171, part.]

4.16.220 Statute tolled—As to person in military service of United States. When the enforcement of civil liabilities against a person in the military service of the United States has been suspended by operation of law, the period of such suspension shall not be a part of the period limited for the commencement of the action. [1941 c 174 § 1, part; Code 1881 § 39; 1854 p 365 § 13; Rem. Supp. 1941 § 171, part.]

Application of federal law: RCW 73.16.070.

4.16.230 Statute tolled by judicial proceedings. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action. [Code 1881 § 40; 1877 p 10 § 41; 1854 p 365 § 14; RRS § 172.]

4.16.240 Effect of reversal of judgment on appeal. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he dies and the cause of action survives, his heirs or representatives may commence a new action within one year after reversal. [Code 1881 § 41; 1877 p 10 § 42; 1854 p 365 § 15; RRS § 173.]

4.16.250 Disability must exist when right of action accrued. No person shall avail himself of a disability unless it existed when his right of action accrued. [Code 1881 § 42; 1877 p 10 § 43; 1854 p 365 § 16; RRS § 174.]

4.16.260 Coexisting disabilities. When two or more disabilities shall coexist at the time the right of action accrues, the limitation shall not attach until they all be removed. [Code 1881 § 43; 1877 p 10 § 44; 1854 p 365 § 17; RRS § 175.]

4.16.270 Effect of partial payment. When any payment of principal or interest has been or shall be made upon any existing contract, whether it be a bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made. [Code 1881 § 45; 1877 p 10 § 46; 1854 p 365 § 19; RRS § 177.]

4.16.280 New promise must be in writing. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter, unless it is contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest. [Code 1881 § 44; 1877 p 10 § 45; 1854 p 365 § 18; RRS § 176.]

4.16.290 Foreign statutes of limitation, how applied. When the cause of action has arisen in another state, territory or country between nonresidents of this state, and by the laws of the state, territory or country where the action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this state. [Code 1881 § 46; 1877 p 10 § 47; 1854 p 365 § 20; RRS § 178.]

4.16.300 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property. RCW 4.16.300 through 4.16.320 shall apply to all claims or causes of action of any kind against any person, arising from such person having constructed, altered or repaired any improvement upon real property, or having performed or furnished any design, planning, surveying, architectural or construction or engineering services, or supervision or observation of construction, or administration of construction contracts for any construction, alteration or repair of any improvement upon real property. This section is intended to benefit only those persons referenced herein and shall not apply to claims or causes of

action against manufacturers. [1986 c 305 § 703; 1967 c 75 § 1.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.16.310 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Accrual and limitations of actions or claims. All claims or causes of action as set forth in RCW 4.16.300 shall accrue, and the applicable statute of limitation shall begin to run only during the period within six years after substantial completion of construction, or during the period within six years after the termination of the services enumerated in RCW 4.16.300, whichever is later. The phrase "substantial completion of construction" shall mean the state of completion reached when an improvement upon real property may be used or occupied for its intended use. Any cause of action which has not accrued within six years after such substantial completion of construction, or within six years after such termination of services, whichever is later, shall be barred: *Provided*, That this limitation shall not be asserted as a defense by any owner, tenant or other person in possession and control of the improvement at the time such cause of action accrues. The limitations prescribed in this section apply to all claims or causes of action as set forth in RCW 4.16.300 brought in the name or for the benefit of the state which are made or commenced after June 11, 1986. [1986 c 305 § 702; 1967 c 75 § 2.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.16.320 Actions or claims arising from construction, alteration, repair, design, planning, survey, engineering, etc., of improvements upon real property—Construction. Nothing in RCW 4.16.300 through 4.16.320 shall be construed as extending the period now permitted by law for bringing any kind of action. [1967 c 75 § 3.]

4.16.350 Actions for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc. Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative; based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: *Provided*, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years. [1987 c 212 § 1401; 1986 c 305 § 502; 1975-'76 2nd ex.s. c 56 § 1; 1971 c 80 § 1.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Severability—1975-'76 2nd ex.s. c 56: "If any provision of this 1976 amendatory 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." [1975-'76 2nd ex.s. c 56 § 15.] For codification of 1975-'76 2nd ex.s. c 56, see Codification Tables, Volume 0.

Actions for injuries resulting from health care: Chapter 7.70 RCW.

Complaint in personal injury actions not to include statement of damages: RCW 4.28.360.

Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter 5.64 RCW.

Immunity of members of professional review committees, societies, examining, licensing or disciplinary boards from civil suit: RCW 4.24.240.

Proof and evidence required in actions against hospitals, personnel and members of healing arts: RCW 4.24.290.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

4.16.360 Application of chapter to paternity actions. This chapter does not limit the time in which an action for determination of paternity may be brought under chapter 26.26 RCW. [1983 1st ex.s. c 41 § 13.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

4.16.370 Actions against personal representative or trustee for breach of fiduciary duties—Statute of limitations. The statute of limitations for actions against a personal representative or trustee for breach of fiduciary duties is as set forth in RCW 11.96.060. [1985 c 11 § 3. Prior: 1984 c 149 § 2.]

Purpose—**Severability**—1985 c 11: See notes following RCW 4.16.110.

Short title—**Application**—1985 c 30: See RCW 11.02.900 and 11.02.901.

Severability—**Effective dates**—1984 c 149: See notes following RCW 11.02.005.

Chapter 4.18

UNIFORM CONFLICT OF LAWS— LIMITATIONS ACT

Sections

4.18.010	Definitions.
4.18.020	Conflict of laws—Limitation periods.
4.18.030	Rules of law applicable to computation of limitation period.
4.18.040	Application of limitation period of other state—Unfairness.
4.18.900	Short title.
4.18.901	Application of chapter—Existing and future claims.
4.18.902	Uniformity of application and construction of chapter.
4.18.903	Severability—1983 c 152.
4.18.904	Section captions not part of law—1983 c 152.

Limitation of actions generally: Chapter 4.16 RCW.

4.18.010 Definitions. As used in this chapter:

(1) "Claim" means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute.

(2) "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them. [1983 c 152 § 1.]

4.18.020 Conflict of laws—Limitation periods. (1) Except as provided by RCW 4.18.040, if a claim is substantively based:

(a) Upon the law of one other state, the limitation period of that state applies; or

(b) Upon the law of more than one state, the limitation period of one of those states, chosen by the law of conflict of laws of this state, applies.

(2) The limitation period of this state applies to all other claims. [1983 c 152 § 2.]

4.18.030 Rules of law applicable to computation of limitation period. If the statute of limitations of another state applies to the assertion of a claim in this state, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period, but its statutes and other rules of law governing conflict of laws do not apply. [1983 c 152 § 3.]

4.18.040 Application of limitation period of other state—Unfairness. If the court determines that the limitation period of another state applicable under RCW 4.18.020 and 4.18.030 is substantially different from the limitation period of this state and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this state applies. [1983 c 152 § 4.]

4.18.900 Short title. This chapter may be cited as the Uniform Conflict of Laws—Limitations Act. [1983 c 152 § 7.]

4.18.901 Application of chapter—Existing and future claims. This chapter applies to claims:

(1) Accruing after July 24, 1983; or

(2) Asserted in a civil action or proceeding more than one year after July 24, 1983, but it does not revive a claim barred before July 24, 1983. [1983 c 152 § 5.]

4.18.902 Uniformity of application and construction of chapter. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1983 c 152 § 6.]

4.18.903 Severability—1983 c 152. 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. [1983 c 152 § 8.]

4.18.904 Section captions not part of law—1983 c 152. Section captions used in this act constitute no part of the law. [1983 c 152 § 9.]

Chapter 4.20

SURVIVAL OF ACTIONS

Sections

4.20.005	Wrongful death—Application of terms.
4.20.010	Wrongful death—Right of action.
4.20.020	Wrongful death—Beneficiaries of action.
4.20.030	Workers' compensation act not affected.
4.20.046	Survival of actions.
4.20.050	Action not abated by death or disability if it survives—Substitution.
4.20.060	Action for personal injury survives to surviving spouse, child, stepchildren, or heirs.

Action for injury or death of a child: RCW 4.24.010.

Actions by and against executors: Chapter 11.48 RCW.

Imputation of contributory fault of decedent in wrongful death actions: RCW 4.22.020.

4.20.005 Wrongful death—Application of terms. Words in RCW 4.20.010, 4.20.020, and 4.20.030 denoting the singular shall be understood as belonging to a plurality of persons or things. The masculine shall apply also to the feminine, and the word person shall also apply to bodies politic and corporate. [1917 c 123 § 3; RRS § 183–2. Formerly RCW 4.20.010, part.]

4.20.010 Wrongful death—Right of action. When the death of a person is caused by the wrongful act, neglect or default of another his personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony. [1917 c 123 § 1; RRS § 183. FORMER PARTS OF SECTION: 1917 c 123 § 3 now codified as RCW 4.20.005. Prior: 1909 c 129 § 1; Code 1881 § 8; 1875 p 4 § 4; 1854 p 220 § 496.]

4.20.020 Wrongful death—Beneficiaries of action. Every such action shall be for the benefit of the wife, husband, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife or husband or such child or children, such action may be maintained for the benefit of the parents, sisters or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just. [1985 c 139 § 1; 1973 1st ex.s. c 154 § 2; 1917 c 123 § 2; RRS § 183-1.]

Severability—1973 1st ex.s c 154: See note following RCW 2.12.030.

4.20.030 Workers' compensation act not affected. RCW 4.20.005, 4.20.010, and 4.20.020 shall not repeal or supersede chapter 74 of the Laws of 1911 [Title 51 RCW] and acts amendatory thereof, or any part thereof. [1917 c 123 § 5; RRS § 183-3.]

4.20.046 Survival of actions. (1) All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section: *Provided, however,* That no personal representative shall be entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased. The liability of property of a husband and wife held by them as community property to execution in satisfaction of a claim enforceable against such property so held shall not be affected by the death of either or both spouses; and a cause of action shall remain an asset as though both claiming spouses continued to live despite the death of either or both claiming spouses.

(2) Where death or an injury to person or property, resulting from a wrongful act, neglect or default, occurs simultaneously with or after the death of a person who would have been liable therefor if his death had not occurred simultaneously with such death or injury or had not intervened between the wrongful act, neglect or default and the resulting death or injury, an action to recover damages for such death or injury may be maintained against the personal representative of such person. [1961 c 137 § 1.]

4.20.050 Action not abated by death or disability if it survives—Substitution. No action shall abate by the death, marriage or other disability of the party, or by the transfer of any interest therein, if the cause of action survives or continues; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest. [Code 1881 § 17; 1877 p 6 § 17; 1869 p 6 § 17; 1854 p 132 § 11; RRS § 193.]

Rules of court: Cf. RAP 3.2, 18.22.

4.20.060 Action for personal injury survives to surviving spouse, child, stepchildren, or heirs. No action for a personal injury to any person occasioning death shall abate, nor shall such right of action determine, by reason of such death, if such person has a surviving spouse or child living, including stepchildren, or leaving no surviving spouse or such children, if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters or brothers; but such action may be prosecuted, or commenced and prosecuted, by the executor or administrator of the deceased, in favor of such surviving spouse, or in favor of the surviving spouse and such children, or if no surviving spouse, in favor of such child or children, or if no surviving spouse or such child or children, then in favor of the decedent's parents, sisters or brothers who may be dependent upon such person for support, and resident in the United States at the time of decedent's death. [1985 c 139 § 2; 1973 1st ex.s. c 154 § 3; 1927 c 156 § 1; 1909 c 144 § 1; Code 1881 § 18; 1854 p 220 § 495; RRS § 194.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Chapter 4.22

CONTRIBUTORY FAULT—EFFECT— IMPUTATION—CONTRIBUTION— SETTLEMENT AGREEMENTS

Sections	
4.22.005	Effect of contributory fault.
4.22.015	"Fault" defined.
4.22.020	Imputation of contributory fault—Spouse or minor child of spouse—Wrongful death actions.
4.22.030	Nature of liability.
4.22.040	Right of contribution—Indemnity.
4.22.050	Enforcement of contribution.
4.22.060	Effect of settlement agreement.
4.22.070	Percentage of fault—Determination—Limitations.
4.22.900	Effective date—1973 1st ex.s. c 138.
4.22.910	Severability—1973 1st ex.s. c 138.
4.22.911	Severability—1981 c 27.
4.22.920	Applicability—1981 c 27.
4.22.925	Applicability—1981 c 27 § 17.

Reviser's note: Section and subsection captions used in this chapter, other than RCW 4.22.020, were enacted as a part of chapter 27, Laws of 1981.

Preamble—1981 c 27: See note following RCW 7.72.010.
Product liability actions: Chapter 7.72 RCW.

4.22.005 Effect of contributory fault. In an action based on fault seeking to recover damages for injury or

death to person or harm to property, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery. This rule applies whether or not under prior law the claimant's contributory fault constituted a defense or was disregarded under applicable legal doctrines, such as last clear chance. [1981 c 27 § 8.]

4.22.015 "Fault" defined. "Fault" includes acts or omissions, including misuse of a product, that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability or liability on a product liability claim. The term also includes breach of warranty, unreasonable assumption of risk, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

A comparison of fault for any purpose under RCW 4.22.005 through 4.22.060 shall involve consideration of both the nature of the conduct of the parties to the action and the extent of the causal relation between such conduct and the damages. [1981 c 27 § 9.]

4.22.020 Imputation of contributory fault—Spouse or minor child of spouse—Wrongful death actions. The contributory fault of one spouse shall not be imputed to the other spouse or the minor child of the spouse to diminish recovery in an action by the other spouse or the minor child of the spouse, or his or her legal representative, to recover damages caused by fault resulting in death or in injury to the person or property, whether separate or community, of the spouse. In an action brought for wrongful death or loss of consortium, the contributory fault of the decedent or injured person shall be imputed to the claimant in that action. [1987 c 212 § 801; 1981 c 27 § 10; 1973 1st ex.s. c 138 § 2.]

Wrongful death actions: Chapter 4.20 RCW.

4.22.030 Nature of liability. Except as otherwise provided in RCW 4.22.070, if more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm, the liability of such persons shall be joint and several. [1986 c 305 § 402; 1981 c 27 § 11.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.22.040 Right of contribution—Indemnity. (1) A right of contribution exists between or among two or more persons who are jointly and severally liable upon the same indivisible claim for the same injury, death or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution among liable persons is the comparative fault of each such person. However, the court may determine that two or more persons are to be treated as a single person for purposes of contribution.

(2) Contribution is available to a person who enters into a settlement with a claimant only (a) if the liability of the person against whom contribution is sought has been extinguished by the settlement and (b) to the extent that the amount paid in settlement was reasonable at the time of the settlement.

(3) The common law right of indemnity between active and passive tortfeasors is abolished: *Provided*, That the common law right of indemnity between active and passive tortfeasors is not abolished in those cases to which a right of contribution by virtue of RCW 4.22.920(2) does not apply. [1982 c 100 § 1; 1981 c 27 § 12.]

Severability—1982 c 100: "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." [1982 c 100 § 4.]

4.22.050 Enforcement of contribution. (1) If the comparative fault of the parties to a claim for contribution has been established previously by the court in the original action, a party paying more than that party's equitable share of the obligation, upon motion, may recover judgment for contribution.

(2) If the comparative fault of the parties to the claim for contribution has not been established by the court in the original action, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is being sought.

(3) If a judgment has been rendered, the action for contribution must be commenced within one year after the judgment becomes final. If no judgment has been rendered, the person bringing the action for contribution either must have (a) discharged by payment the common liability within the period of the statute of limitations applicable to the claimant's right of action against him and commenced the action for contribution within one year after payment, or (b) agreed while the action was pending to discharge the common liability and, within one year after the agreement, have paid the liability and commenced an action for contribution. [1981 c 27 § 13.]

4.22.060 Effect of settlement agreement. (1) A party prior to entering into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with a claimant shall give five days' written notice of such intent to all other parties and the court. The court may for good cause authorize a shorter notice period. The notice shall contain a copy of the proposed agreement. A hearing shall be held on the issue of the reasonableness of the amount to be paid with all parties afforded an opportunity to present evidence. A determination by the court that the amount to be paid is reasonable must be secured. If an agreement was entered into prior to the filing of the action, a hearing on the issue of the reasonableness of the amount paid at the time it was entered into may be held at any time prior to final judgment upon motion of a party.

The burden of proof regarding the reasonableness of the settlement offer shall be on the party requesting the settlement.

(2) A release, covenant not to sue, covenant not to enforce judgment, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount paid pursuant to the agreement unless the amount paid was unreasonable at the time of the agreement in which case the claim shall be reduced by an amount determined by the court to be reasonable.

(3) A determination that the amount paid for a release, covenant not to sue, covenant not to enforce judgment, or similar agreement was unreasonable shall not affect the validity of the agreement between the released and releasing persons nor shall any adjustment be made in the amount paid between the parties to the agreement. [1987 c 212 § 1901; 1981 c 27 § 14.]

4.22.070 Percentage of fault—Determination—Limitations. (1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages, including the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities released by the claimant, entities immune from liability to the claimant and entities with any other individual defense against the claimant. Judgment shall be entered against each defendant except those who have been released by the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. The liability of each defendant shall be several only and shall not be joint except:

(a) A party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

(b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants total damages.

(2) If a defendant is jointly and severally liable under one of the exceptions listed in subsections (1)(a) or (1)(b) of this section, such defendant's rights to contribution against another jointly and severally liable defendant, and the effect of settlement by either such defendant, shall be determined under RCW 4.22.040, 4.22.050, and 4.22.060.

(3)(a) Nothing in this section affects any cause of action relating to hazardous wastes or substances or solid waste disposal sites.

(b) Nothing in this section shall affect a cause of action arising from the tortious interference with contracts or business relations.

(c) Nothing in this section shall affect any cause of action arising from the manufacture or marketing of a fungible product in a generic form which contains no clearly identifiable shape, color, or marking. [1986 c 305 § 401.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.22.900 Effective date—1973 1st ex.s. c 138. This act takes effect as of 12:01 a.m. on April 1, 1974. [1973 1st ex.s c 138 § 3.]

4.22.910 Severability—1973 1st ex.s. c 138. If any provision of this act or the application thereof to any person or circumstance is held unconstitutional, the remainder of this act and the application of such provisions to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision. [1973 1st ex.s. c 138 § 4.]

4.22.911 Severability—1981 c 27. If any provision of this amendatory 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. [1981 c 27 § 18.]

4.22.920 Applicability—1981 c 27. (1) *This amendatory act shall apply to all claims arising on or after July 26, 1981.

(2) Notwithstanding subsection (1) of this section, RCW 4.22.040, 4.22.050, and 4.22.060 shall also apply to all actions in which trial on the underlying action has not taken place prior to July 26, 1981, except that there is no right of contribution in favor of or against any party who has, prior to July 26, 1981, entered into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with the claimant. [1982 c 100 § 2; 1981 c 27 § 15.]

***Reviser's note:** "This amendatory act" [1981 c 27] consists of chapter 7.72 RCW, RCW 4.22.005, 4.22.015, 4.22.030 through 4.22.060, 4.22.911, 4.22.920, the amendment to RCW 4.22.020, and the repeal of RCW 4.22.010.

Severability—1982 c 100: See note following RCW 4.22.040.

4.22.925 Applicability—1981 c 27 § 17. In accordance with section 15(1), chapter 27, Laws of 1981, the repeal of RCW 4.22.010 by section 17, chapter 27, Laws of 1981 applies only to claims arising on or after July 26, 1981. RCW 4.22.010 shall continue to apply to claims arising prior to July 26, 1981. [1982 c 100 § 3.]

Severability—1982 c 100: See note following RCW 4.22.040.

Chapter 4.24

SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES

Sections

- 4.24.005 Tort actions—Attorneys' fees—Determination of reasonableness.
- 4.24.010 Action for injury or death of child.
- 4.24.020 Action by parent for seduction of child.
- 4.24.040 Action for negligently permitting fire to spread.
- 4.24.050 Kindling of fires by persons driving lumber.
- 4.24.060 Application of common law.
- 4.24.070 Recovery of money lost at gambling.
- 4.24.080 Action to recover leased premises used for gambling.
- 4.24.090 Validity of evidence of gambling debt.
- 4.24.115 Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate.
- 4.24.130 Action for change of name.
- 4.24.140 Action by another state to enforce tax liability.
- 4.24.141 Action by another state to enforce tax liability—"Taxes" defined.
- 4.24.150 Action for fines or forfeitures.
- 4.24.160 Action for penalty—Amount of recovery.
- 4.24.170 Judgment for penalty or forfeiture—Effect of collusion.
- 4.24.180 Disposition of fines, fees, penalties and forfeitures—Venue.
- 4.24.190 Action against parent for wilful injury to person or property by minor—Monetary limitation—Common law liability preserved.
- 4.24.200 Liability of owners or others in possession of land and water areas for injuries to recreation users—Purpose.
- 4.24.210 Liability of owners or others in possession of land and water areas for injuries to recreation users—Limitation.
- 4.24.220 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
- 4.24.230 Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel or motel without paying—Adults, minors—Parents, guardians.
- 4.24.235 Physicians—Immunity from liability regarding safety belts.
- 4.24.240 Persons licensed to provide health care or related services, employees, hospitals, clinics, etc.—Professional review committee, society, examining, licensing or disciplinary board members, etc.—Immunity from civil suit arising from committee, board, society, etc., duties.
- 4.24.250 Health care provider filing charges or presenting evidence—Immunity—Records, members, employees, etc., of review committees or boards not subject to process.
- 4.24.260 Physicians, dentists or pharmacists filing charges or presenting evidence before boards—Immunity.
- 4.24.264 Boards of directors or officers of nonprofit corporations—Liability—Limitations.
- 4.24.270 Physician or hospital rendering emergency care—Immunity from civil liability.
- 4.24.280 Acts or omissions of physician's trained mobile intensive care paramedic—Immunity from liability.
- 4.24.290 Action for damages based on professional negligence of hospitals or members of healing arts—Standard of proof—Evidence—Exception.
- 4.24.295 Special action for injuries resulting from health care, special procedure.
- 4.24.300 Persons rendering emergency care or transportation—Immunity from liability—Exclusion.
- 4.24.310 Persons rendering emergency care or transportation—Definitions.

- 4.24.312 Person rendering emergency aid in hazardous materials incident—Immunity from liability—Limitations.
- 4.24.314 Person transporting hazardous materials—Responsibility for incident clean-up—Liability of person causing hazardous materials incident.
- 4.24.316 Emergency care, rescue, assistance, or recovery services in mine rescue or recovery work—Immunity from liability.
- 4.24.320 Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees.
- 4.24.350 Actions for damages which are false, unfounded, malicious, without probable cause or part of conspiracy—Action, claim, or counterclaim by judicial officer, prosecuting authority, or law enforcement officer for malicious prosecution—Damages and costs—Definitions.
- 4.24.360 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—Declared void and unenforceable—Exceptions.
- 4.24.370 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—"Construction contract" defined.
- 4.24.380 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—Prospective application of RCW 4.24.360.
- 4.24.400 Building warden assisting others to evacuate building or attempting to control hazard—Immunity from liability.
- 4.24.405 Action for malicious harassment of another because of race, color, religion, ancestry or national origin.
- 4.24.410 Dog handler using police dog in line of duty—Immunity.
- 4.24.420 Action by person committing a felony—Defense—Actions under 42 U.S.C. Sec. 1983.
- 4.24.450 Liability of operators for nuclear incidents—Definitions.
- 4.24.460 Liability of operators for nuclear incidents—Presumption of operator negligence—Rebuttal—Recovery for negligence or against other parties not limited by section.
- 4.24.470 Liability of officials and members of governing body of public agency—Definitions.

Action for money damages due to gambling violations: RCW 9.46.200. Arson reporting immunity act: Chapter 48.50 RCW.

Consent to treatment of minor for venereal disease, liability: RCW 70.24.110.

Food donation and distribution, limitation of liability: Chapter 69.80 RCW.

Special proceedings: Title 7 RCW.

4.24.005 Tort actions—Attorneys' fees—Determination of reasonableness. Any party charged with the payment of attorney's fees in any tort action may petition the court not later than forty-five days of receipt of a final billing or accounting for a determination of the reasonableness of that party's attorneys' fees. The court shall make such a determination and shall take into consideration the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) Whether the fee is fixed or contingent;

(9) Whether the fixed or contingent fee agreement was in writing and whether the client was aware of his or her right to petition the court under this section;

(10) The terms of the fee agreement. [1987 c 212 § 1601; 1986 c 305 § 201.]

Application—1987 c 212 § 1601: "Section 1601 of this act applies to agreements for attorneys' fees entered into after April 29, 1987." [1987 c 212 § 1602.]

Application—1986 c 305 § 201: "Section 201 of this act applies to agreements for attorney's fees entered into after June 11, 1986." [1986 c 305 § 202.]

Preamble—**Report to legislature**—**Severability**—1986 c 305: See notes following RCW 4.16.160.

4.24.010 Action for injury or death of child. The mother or father or both may maintain an action as plaintiff for the injury or death of a minor child, or a child on whom either, or both, are dependent for support: *Provided*, That in the case of an illegitimate child the father cannot maintain or join as a party an action unless paternity has been duly established and the father has regularly contributed to the child's support.

This section creates only one cause of action, but if the parents of the child are not married, are separated, or not married to each other damages may be awarded to each plaintiff separately, as the court finds just and equitable.

If one parent brings an action under this section and the other parent is not named as a plaintiff, notice of the institution of the suit, together with a copy of the complaint, shall be served upon the other parent: *Provided*, That when the mother of an illegitimate child initiates an action, notice shall be required only if paternity has been duly established and the father has regularly contributed to the child's support.

Such notice shall be in compliance with the statutory requirements for a summons. Such notice shall state that the other parent must join as a party to the suit within twenty days or the right to recover damages under this section shall be barred. Failure of the other parent to timely appear shall bar such parent's action to recover any part of an award made to the party instituting the suit.

In such an action, in addition to damages for medical, hospital, medication expenses, and loss of services and support, damages may be recovered for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship in such amount as, under all the circumstances of the case, may be just. [1973 1st ex.s. c 154 § 4; 1967 ex.s. c 81 § 1; 1927 c 191 § 1; Code 1881 § 9; 1877 p 5 § 9; 1873 p 5 § 10; 1869 p 4 § 9; RRS § 184.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

4.24.020 Action by parent for seduction of child. A father or mother, may maintain an action as plaintiff for the seduction of a child, and the guardian for the seduction of a ward, though the child or the ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service. [1973 1st ex.s. c 154 § 5; Code 1881 § 10; 1877 p 5 § 10; 1869 p 4 § 10; RRS § 185.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

4.24.040 Action for negligently permitting fire to spread. If any person shall for any lawful purpose kindle a fire upon his own land, he shall do it at such time and in such manner, and shall take such care of it to prevent it from spreading and doing damage to other persons' property, as a prudent and careful man would do, and if he fails so to do he shall be liable in an action on the case to any person suffering damage thereby to the full amount of such damage. [Code 1881 § 1226; 1877 p 300 § 3; RRS § 5647.]

Reviser's note: The words "on the case" appear in the 1877 law and in the 1881 enrolled bill but were inadvertently omitted from the printed Code of 1881. See also *Pettigrew v. McCoy*, 138 Wash. 619.

Arson, reckless burning, and malicious mischief: Chapter 9A.48 RCW.

4.24.050 Kindling of fires by persons driving lumber. Persons engaged in driving lumber upon any waters or streams of this state, may kindle fires when necessary for the purposes in which they are engaged, but shall be bound to use the utmost caution to prevent the same from spreading and doing damage; and if they fail so to do, they shall be subject to all liabilities and penalties of RCW 4.24.040, 4.24.050, and 4.24.060, in the same manner as if the privilege granted by this section had not been allowed. [1983 c 3 § 4; Code 1881 § 1228; 1877 p 300 § 5; RRS § 5648.]

4.24.060 Application of common law. The common law right to an action for damages done by fires, is not taken away or diminished by RCW 4.24.040, 4.24.050, and 4.24.060, but it may be pursued; but any person availing himself of the provisions of RCW 4.24.040, shall be barred of his action at common law for the damage so sued for, and no action shall be brought at common law for kindling fires in the manner described in RCW 4.24.050; but if any such fires shall spread and do damage, the person who kindled the same and any person present and concerned in driving such lumber, by whose act or neglect such fire is suffered to spread and do damage shall be liable in an action on the case for the amount of damages thereby sustained. [1983 c 3 § 5; Code 1881 § 1229; 1877 p 300 § 6; RRS § 5649.]

4.24.070 Recovery of money lost at gambling. All persons losing money or anything of value at or on any illegal gambling games shall have a cause of action to recover from the dealer or player winning, or from the proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount

of the money or the value of the thing so lost. [1957 c 7 § 2; Code 1881 § 1255; 1879 p 98 § 3; RRS § 5851.]

Gambling: Chapter 9.46 RCW.

4.24.080 Action to recover leased premises used for gambling. It shall be lawful for any person letting or renting any house, room, shop or other building whatsoever, or any boat, booth, garden, or other place, which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid and terminate such lease, or contract of occupancy, and to recover immediate possession of the premises by an action at law for that purpose. [1957 c 7 § 3; Code 1881 § 1257; 1879 p 98 § 5; RRS § 5852.]

4.24.090 Validity of evidence of gambling debt. All notes, bills, bonds, mortgages, or other securities, or other conveyances, the consideration for which shall be money, or other things of value, won by playing at any unlawful game, shall be void and of no effect, as between the parties thereto and all other persons, except holders in good faith, without notice of the illegality of such contract or conveyance. [1957 c 7 § 4; Code 1881 § 1254; 1879 p 98 § 2; RRS § 5853.]

4.24.115 Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate. A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property:

(1) Caused by or resulting from the sole negligence of the indemnitee, his agents or employees is against public policy and is void and unenforceable;

(2) Caused by or resulting from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees, and (b) the indemnitor or the indemnitor's agents or employees, is valid and enforceable only to the extent of the indemnitor's negligence and only if the agreement specifically and expressly provides therefor, and may waive the indemnitor's immunity under industrial insurance, Title 51 RCW, only if the agreement specifically and expressly provides therefor and the waiver was mutually negotiated by the parties. This subsection applies to agreements entered into after June 11, 1986. [1986 c 305 § 601; 1967 ex.s. c 46 § 2.]

Preamble—Report to legislature—Severability—1986 c 305: See notes following RCW 4.16.160.

4.24.130 Action for change of name. Any person desiring a change of his name or that of his child or ward, may apply therefor to the superior court of the county in

which he resides, by petition setting forth the reasons for such change; thereupon such court in its discretion may order a change of the name and thenceforth the new name shall be in place of the former. [Code 1881 § 635; 1877 p 132 § 638; RRS § 998.]

4.24.140 Action by another state to enforce tax liability. The courts of the state shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect to the liability for taxes lawfully imposed by the laws of this state and the officials of such state are hereby authorized to bring an action in all the courts of this state for the collection of such taxes: *Provided*, That the courts of this state shall not recognize claims for such taxes against this state or any of its political subdivisions: *Provided, further*, That the time limitations upon the bringing of such actions which may be imposed by the laws of such other state shall not be tolled by the absence from such state of the person from whom the taxes are sought. The certificate of the secretary of state of such other state to the effect that such officials have the authority to collect the taxes sought to be recovered by such action shall be conclusive proof of that authority. [1951 c 166 § 1. FORMER PART OF SECTION: 1951 c 166 § 2 now codified as RCW 4.24.141.]

Limitation of actions: Chapter 4.16 RCW.

4.24.141 Action by another state to enforce tax liability—"Taxes" defined. The term "taxes" as used in RCW 4.24.140 shall include:

(1) Any and all tax assessments lawfully made whether they be based upon a return or other disclosure of the taxpayer, upon information and belief of the taxing authority, or otherwise;

(2) Any and all penalties lawfully imposed pursuant to a tax statute;

(3) Interest charges lawfully added to the tax liability which constitutes the subject of the action. [1951 c 166 § 2. Formerly RCW 4.24.140, part.]

4.24.150 Action for fines or forfeitures. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them. [Code 1881 § 657; 1869 p 153 § 597; RRS § 963.]

Limitation of actions: Chapter 4.16 RCW.

4.24.160 Action for penalty—Amount of recovery. When an action shall be commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense. [Code 1881 § 658; 1869 p 153 § 598; RRS § 964.]

4.24.170 Judgment for penalty or forfeiture—Effect of collusion. A recovery of a judgment for a penalty

or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant wholly or partially from the consequences contemplated by law, in case when the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person. [Code 1881 § 659; 1869 p 153 § 599; RRS § 965.]

4.24.180 Disposition of fines, fees, penalties and forfeitures—Venue. Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the school fund of the proper county: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. Whenever, by the provisions of law, any property real or personal shall be forfeited to the state, or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found or where such property may be. [1987 c 202 § 115; 1969 ex.s. c 199 § 9; Code 1881 § 660; 1869 p 153 § 600; RRS § 966.]

Intent—1987 c 202: See note following RCW 2.04.190.

Disposition of fines, fees, costs, penalties and forfeitures: RCW 10.82.070.

4.24.190 Action against parent for wilful injury to person or property by minor—Monetary limitation—Common law liability preserved. The parent or parents of any minor child under the age of eighteen years who is living with the parent or parents and who shall wilfully or maliciously destroy property, real or personal or mixed, or who shall wilfully and maliciously inflict personal injury on another person, shall be liable to the owner of such property or to the person injured in a civil action at law for damages in an amount not to exceed three thousand dollars. This section shall in no way limit the amount of recovery against the parent or parents for their own common law negligence. [1977 ex.s. c 145 § 1; 1967 ex.s. c 46 § 1; 1961 c 99 § 1.]

4.24.200 Liability of owners or others in possession of land and water areas for injuries to recreation users—Purpose. The purpose of RCW 4.24.200 and 4.24.210 is to encourage owners or others in lawful possession and control of land and water areas or channels to make them available to the public for recreational purposes by limiting their liability toward persons entering thereon and toward persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon. [1969 ex.s. c 24 § 1; 1967 c 216 § 1.]

4.24.210 Liability of owners or others in possession of land and water areas for injuries to recreation users—Limitation. Any public or private landowners 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 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, 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: *Provided*, That any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to ten dollars for the cutting, gathering, and removing of firewood from the land: *Provided further*, That nothing in this section shall prevent the liability of such 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: *Provided further*, That nothing in RCW 4.24.200 and 4.24.210 limits or expands in any way the doctrine of attractive nuisance: *And provided further*, That the usage by members of the public is permissive and does not support any claim of adverse possession. [1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1969 ex.s. c 24 § 2; 1967 c 216 § 2.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

Off-road and nonhighway vehicles: Chapter 46.09 RCW.
Snowmobiles: Chapter 46.10 RCW.

4.24.220 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense. In any civil action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the mercantile establishment, his authorized employee or agent, and that such peace officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny or shoplifting on such premises of such merchandise. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise. [1967 c 76 § 3.]

Theft and robbery: Chapter 9A.56 RCW.

4.24.230 Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel or motel without paying—Adults,

minors—Parents, guardians. (1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof shall be liable in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value thereof not to exceed one thousand dollars, plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. A person who shall receive any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section.

(2) The parent or legal guardian having the custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable as a penalty to the owner or seller for the retail value of such goods, wares, or merchandise not to exceed five hundred dollars plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. The parent or legal guardian having the custody of an unemancipated minor, who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. The parent or legal guardian having the custody of an unemancipated minor, who receives any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. For the purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the department of social and health services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of chapter 9A.56 RCW or RCW 9.45.040 shall not be a condition precedent to maintenance of a civil action authorized by this section.

(5) An owner or seller demanding payment of a penalty under subsection (1) or (2) of this section shall give written notice to the person or persons from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of a penalty described in subsection (1) of [or] (2) of this section. [1987 c 353 § 1; 1981 c 126 § 1; 1977 ex.s. c 134 § 1; 1975 1st ex.s. c 59 § 1.]

Obtaining food from restaurant without paying: RCW 19.48.110.

4.24.235 Physicians—Immunity from liability regarding safety belts. A licensed physician shall not be liable for civil damages resulting directly or indirectly from providing, or refusing to provide, a written verification that a person under that physician's care is [is] unable to wear an automotive safety belt. [1986 c 152 § 2.]

Safety belts, use required: RCW 46.61.688.

4.24.240 Persons licensed to provide health care or related services, employees, hospitals, clinics, etc.—Professional review committee, society, examining, licensing or disciplinary board members, etc.—Immunity from civil suit arising from committee, board, society, etc., duties. (1) (a) A person licensed by this state to provide health care or related services, including, but not limited to, a certified acupuncturist, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, including, in the event such person is deceased, his estate or personal representative;

(b) An employee or agent of a person described in subparagraph (a) of this subsection, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(c) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subparagraph (a) of this subsection, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, trustee, employee, or agent thereof acting in the course and scope of his employment, including in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

shall be immune from civil action for damages arising out of the good faith performance of their duties on such committees, where such actions are being brought by or on behalf of the person who is being evaluated.

(2) No member, employee, staff person, or investigator of a professional review committee shall be liable in a civil action as a result of acts or omissions made in good faith on behalf of the committee; nor shall any person be so liable for filing charges with or supplying information or testimony in good faith to any professional review committee; nor shall a member, employee, staff person, or investigator of a professional society, of

a professional examining or licensing board, of a professional disciplinary board, of a governing board of any institution, or of any employer of professionals be so liable for good faith acts or omissions made in full or partial reliance on recommendations or decisions of a professional review committee or examining board. [1985 c 326 § 25; 1975-'76 2nd ex.s. c 56 § 4; 1975 1st ex.s. c 114 § 1; 1969 ex.s. c 157 § 1.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

4.24.250 Health care provider filing charges or presenting evidence—Immunity—Records, members, employees, etc., of review committees or boards not subject to process. Any health care provider as defined in RCW 7.70.020 (1) and (2) as now existing or hereafter amended who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care, shall be immune from civil action for damages arising out of such activities. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, shall not be subject to subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined above. [1981 c 181 § 1; 1979 c 17 § 1; 1977 c 68 § 1; 1975 1st ex.s. c 114 § 2; 1971 ex.s. c 144 § 1.]

4.24.260 Physicians, dentists or pharmacists filing charges or presenting evidence before boards—Immunity. Physicians licensed under chapter 18.71 RCW[,] dentists licensed under chapter 18.32 RCW and pharmacists licensed under chapter 18.64 RCW who, in good faith, file charges or present evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before the medical disciplinary board established under chapter 18.72 RCW, in a proceeding under chapter 18.32 RCW or to the board of pharmacy under RCW 18.64.160 shall be immune from civil action for damages arising out of such activities. [1975 1st ex.s. c 114 § 3; 1971 ex.s. c 144 § 2.]

4.24.264 Boards of directors or officers of nonprofit corporations—Liability—Limitations. (1) Except as provided in subsection (2) of this section, a member of the board of directors or an officer of any nonprofit corporation is not individually liable for any discretionary decision or failure to make a discretionary decision within his or her official capacity as director or officer

unless the decision or failure to decide constitutes gross negligence.

(2) Nothing in this section shall limit or modify in any manner the duties or liabilities of a director or officer of a corporation to the corporation or the corporation's members. [1987 c 212 § 1101; 1986 c 305 § 903.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.24.270 Physician or hospital rendering emergency care—Immunity from civil liability. See RCW 18.71.220.

4.24.280 Acts or omissions of physician's trained mobile intensive care paramedic—Immunity from liability. See RCW 18.71.210.

4.24.290 Action for damages based on professional negligence of hospitals or members of healing arts—Standard of proof—Evidence—Exception. In any civil action for damages based on professional negligence against a hospital which is licensed by the state of Washington or against the personnel of any such hospital, or against a member of the healing arts including, but not limited to, an acupuncturist certified under chapter 18.06 RCW, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, a chiropractor licensed under chapter 18.25 RCW, a dentist licensed under chapter 18.32 RCW, a podiatrist licensed under chapter 18.22 RCW, or a nurse licensed under chapters 18.78 or 18.88 RCW, the plaintiff in order to prevail shall be required to prove by a preponderance of the evidence that the defendant or defendants failed to exercise that degree of skill, care, and learning possessed at that time by other persons in the same profession, and that as a proximate result of such failure the plaintiff suffered damages, but in no event shall the provisions of this section apply to an action based on the failure to obtain the informed consent of a patient. [1985 c 326 § 26; 1983 c 149 § 1; 1975 1st ex.s. c 35 § 1.]

Limitations of actions against hospitals and members of healing arts: RCW 4.16.350.

4.24.295 Special action for injuries resulting from health care, special procedure. See chapter 7.70 RCW.

4.24.300 Persons rendering emergency care or transportation—Immunity from liability—Exclusion. Any person, including but not limited to a volunteer provider of emergency or medical services, who without compensation or the expectation of compensation renders emergency care at the scene of an emergency or who participates in transporting, not for compensation, therefrom an injured person or persons for emergency medical treatment shall not be liable for civil damages resulting from any act or omission in the rendering of such emergency care or in transporting such persons, other than acts or omissions constituting gross negligence or wilful or wanton misconduct. Any person rendering emergency care during the course of regular

employment and receiving compensation or expecting to receive compensation for rendering such care is excluded from the protection of this subsection. [1985 c 443 § 19; 1975 c 58 § 1.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

4.24.310 Persons rendering emergency care or transportation—Definitions. For the purposes of RCW 4.24.300 the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Compensation" has its ordinary meaning but does not include nominal payments, reimbursement for expenses, or pension benefits, nor does it include payment made to volunteer part-time and volunteer on-call personnel of fire departments, fire districts, ambulance districts, police departments, or any emergency response organizations.

(2) "Emergency care" means care, first aid, treatment, or assistance rendered to the injured person in need of immediate medical attention and includes providing or arranging for further medical treatment or care for the injured person. Except with respect to the injured person or persons being transported for further medical treatment or care, the immunity granted by RCW 4.24.300 does not apply to the negligent operation of any motor vehicle.

(3) "Scene of an emergency" means the scene of an accident or other sudden or unexpected event or combination of circumstances which calls for immediate action. [1987 c 212 § 501; 1985 c 443 § 20; 1975 c 58 § 2.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

4.24.312 Person rendering emergency aid in hazardous materials incident—Immunity from liability—Limitations. See RCW 70.136.050.

4.24.314 Person transporting hazardous materials—Responsibility for incident clean-up—Liability of person causing hazardous materials incident. (1) Any person transporting hazardous materials shall clean up any hazardous materials incident that occurs during transportation, and shall take such additional action as may be reasonably necessary after consultation with the designated incident command agency in order to achieve compliance with all applicable federal and state laws and regulations.

Any person responsible for causing the hazardous materials incident, other than operating employees of a transportation company, is liable to the state or any political subdivision thereof for extraordinary costs incurred by the state or the political subdivision in the course of protecting the public from actual or threatened harm resulting from the hazardous materials incident.

(2) "Extraordinary costs" as used in this section means those reasonable and necessary costs incurred by a governmental entity in the course of protecting life and

property that exceed the normal and usual expenses anticipated for police and fire protection, emergency services, and public works. These shall include, but not be limited to, overtime for public employees, unusual fuel consumption requirements, any loss or damage to publicly owned equipment, and the purchase or lease of any special equipment or services required to protect the public during the hazardous materials incident. [1984 c 165 § 3.]

4.24.316 Emergency care, rescue, assistance, or recovery services in mine rescue or recovery work—Immunity from liability. See RCW 38.52.198.

4.24.320 Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees. Any person who suffers damages as a result of actions described in RCW 9A.48.080(c) or any owner of a horse, mule, cow, heifer, bull, steer, swine, or sheep who suffers damages as a result of a wilful, unauthorized act described in RCW 9A.56.080 may bring an action against the person or persons committing the act in a court of competent jurisdiction for exemplary damages up to three times the actual damages sustained, plus attorney's fees. [1979 c 145 § 1; 1977 ex.s. c 174 § 3.]

4.24.350 Actions for damages which are false, unfounded, malicious, without probable cause or part of conspiracy—Action, claim, or counterclaim by judicial officer, prosecuting authority, or law enforcement officer for malicious prosecution—Damages and costs—Definitions. (1) In any action for damages, whether based on tort or contract or otherwise, a claim or counterclaim for damages may be litigated in the principal action for malicious prosecution on the ground that the action was instituted with knowledge that the same was false, and unfounded, malicious and without probable cause in the filing of such action, or that the same was filed as a part of a conspiracy to misuse judicial process by filing an action known to be false and unfounded.

(2) In any action, claim, or counterclaim brought by a judicial officer, prosecuting authority, or law enforcement officer for malicious prosecution arising out of the performance or purported performance of the public duty of such officer, an arrest or seizure of property need not be an element of the claim, nor do special damages need to be proved. A judicial officer, prosecuting authority, or law enforcement officer prevailing in such an action may be allowed an amount up to one thousand dollars as liquidated damages, together with a reasonable attorneys' fee, and other costs of suit. A government entity which has provided legal services to the prevailing judicial officer, prosecuting authority, or law enforcement officer has reimbursement rights to any award for reasonable attorneys' fees and other costs, but shall have no such rights to any liquidated damages allowed.

(3) No action may be brought against an attorney under this section solely because of that attorney's representation of a party in a lawsuit.

(4) As used in this section:

(a) "Judicial officer" means a justice, judge, magistrate, or other judicial officer of the state or a city, town, or county.

(b) "Prosecuting authority" means any officer or employee of the state or a city, town, or county who is authorized by law to initiate a criminal or civil proceeding on behalf of the public.

(c) "Law enforcement officer" means a member of the state patrol, a sheriff or deputy sheriff, or a member of the police force of a city, town, university, or state college, or a "wildlife agent" or "ex officio wildlife agent" as defined in RCW 77.08.010. [1984 c 133 § 2; 1977 ex.s. c 158 § 1.]

Legislative findings—1984 c 133: "The legislature finds that a growing number of unfounded lawsuits, claims, and liens are filed against law enforcement officers, prosecuting authorities, and judges, and against their property, having the purpose and effect of deterring those officers in the exercise of their discretion and inhibiting the performance of their public duties.

The legislature also finds that the cost of defending against such unfounded suits, claims and liens is severely burdensome to such officers, and also to the state and the various cities and counties of the state. The purpose of section 2 of this 1984 act is to provide a remedy to those public officers and to the public." [1984 c 133 § 1.]

Construction—1984 c 133: "The provisions of section 2 of this 1984 act are remedial and shall be liberally construed." [1984 c 133 § 3.]

Severability—1984 c 133: "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." [1984 c 133 § 4.]

4.24.360 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—Declared void and unenforceable—Exceptions. Any clause in a construction contract, as defined in RCW 4.24.370, which purports to waive, release, or extinguish the rights of a contractor, subcontractor, or supplier to damages or an equitable adjustment arising out of unreasonable delay in performance which delay is caused by the acts or omissions of the contractee or persons acting for the contractee is against public policy and is void and unenforceable.

This section shall not be construed to void any provision in a construction contract, as defined in RCW 4.24.370, which (1) requires notice of delays, (2) provides for arbitration or other procedure for settlement, or (3) provides for reasonable liquidated damages. [1979 ex.s. c 264 § 1.]

4.24.370 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—"Construction contract" defined. "Construction contract" for purposes of RCW 4.24.360 means any contract or agreement for the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith. [1979 ex.s. c 264 § 2.]

4.24.380 Construction contract provision waiving, releasing, etc., rights of contractor, etc., to damages or adjustment for unreasonable delay caused by contractee, etc.—Prospective application of RCW 4.24.360. The provisions of RCW 4.24.360 shall apply to contracts or agreements entered into after September 1, 1979. [1979 ex.s. c 264 § 3.]

4.24.400 Building warden assisting others to evacuate building or attempting to control hazard—Immunity from liability. No building warden, who acts in good faith, with or without compensation, shall be personally liable for civil damages arising from his or her negligent acts or omissions during the course of assigned duties in assisting others to evacuate industrial, commercial, governmental or multi-unit residential buildings or in attempting to control or alleviate a hazard to the building or its occupants caused by fire, earthquake or other threat to life or limb. The term "building warden" means an individual who is assigned to take charge of the occupants on a floor or in an area of a building during an emergency in accordance with a predetermined fire safety or evacuation plan; and/or an individual selected by a municipal fire chief or the director of community development, through the director of fire protection, after an emergency is in progress to assist in evacuating the occupants of such a building or providing for their safety. This section shall not apply to any acts or omissions constituting gross negligence or wilful or wanton misconduct. [1986 c 266 § 79; 1981 c 320 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

4.24.405 Action for malicious harassment of another because of race, color, religion, ancestry or national origin. See RCW 9A.36.080.

4.24.410 Dog handler using police dog in line of duty—Immunity. (1) As used in this section:

(a) "Police dog" means a dog used by a law enforcement agency specially trained for law enforcement work and under the control of a dog handler.

(b) "Dog handler" means a law enforcement officer who has successfully completed training as prescribed by the Washington state criminal justice training commission in police dog handling.

(2) Any dog handler who uses a police dog in the line of duty in accordance with standards established by the law enforcement agency for which he works is immune from civil action for damages arising out of such activities. [1982 c 22 § 1.]

4.24.420 Action by person committing a felony—Defense—Actions under 42 U.S.C. Sec. 1983. It is a complete defense to any action for damages for personal injury or wrongful death that the person injured or killed was engaged in the commission of a felony at the time of the occurrence causing the injury or death and the felony was a proximate cause of the injury or death. However, nothing in this section shall affect a right of action under 42 U.S.C. Sec. 1983. [1987 c 212 § 901; 1986 c 305 § 501.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.24.450 Liability of operators for nuclear incidents—Definitions. Unless the context clearly requires otherwise the following definitions apply throughout RCW 4.24.460:

(1) "Nuclear incident" means any occurrence within this state causing, within or without this state, bodily injury, sickness, disease or death; loss or damage to property; or loss of use of property arising out of the resultant radioactive, toxic, explosive, or other hazardous properties of radioactive wastes being stored in or being transported to or from a waste repository in this state.

(2) "Operator" means the entity or entities that have been given responsibility for constructing, operating, or monitoring waste repositories or transporting radioactive waste and may include the United States and its federal agencies.

(3) "Radioactive waste" includes, but is not limited to, high-level radioactive waste, low-level radioactive waste, transuranic radioactive waste, spent nuclear fuel, and radioactive defense waste. It does not include de minimus radioactive waste.

(4) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(5) "Waste repository" means any system which is intended or may be used for the disposal or storage of radioactive waste including permanent disposal systems, interim storage systems, monitored retrievable storage systems, defense waste storage systems, test and evaluation facilities, or similar systems. [1985 c 275 § 1.]

4.24.460 Liability of operators for nuclear incidents—Presumption of operator negligence—Rebuttal—Recovery for negligence or against other parties not limited by section. (1) Operators are liable for failure to exercise ordinary and reasonable care to protect persons and property subject to injury in nuclear incidents. In addition, operators are liable for operational expenses and emergency purchases incurred by local or state governments in responding to nuclear incidents.

(2) If a nuclear incident occurs, there is a presumption that the operator of a waste repository was negligent in constructing, operating, or monitoring the waste repository, or in transporting radioactive waste, and that the operator was an actual cause of the nuclear incident. The presumption may be rebutted by a clear and convincing showing by the operator that the nuclear incident was not the result of the operator's negligence and that the operator's negligence was not an actual cause of the nuclear incident.

(3) This section does not limit the recovery of parties injured by a nuclear incident against the operators of a waste repository under theories of negligence in selecting contractors, failure to retain adequate controls over the waste repository, vicarious liability for contractors, failure to take reasonable precautionary measures with respect to inherently dangerous activities, and other

negligence theories. This section does not limit the recovery of parties injured by a nuclear incident against parties other than operators of a waste facility. [1985 c 275 § 2.]

4.24.470 Liability of officials and members of governing body of public agency—Definitions. (1) An appointed or elected official or member of the governing body of a public agency is immune from civil liability for damages for any discretionary decision or failure to make a discretionary decision within his or her official capacity, but liability shall remain on the public agency for the tortious conduct of its officials or members of the governing body.

(2) For purposes of this section:

(a) "Public agency" means any state agency, board, commission, department, institution of higher education, school district, political subdivision, or unit of local government of this state including but not limited to municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts.

(b) "Governing body" means the policy-making body of a public agency. [1987 c 212 § 401.]

Actions against local government for tortious conduct: Chapter 4.96 RCW.

Chapter 4.28

COMMENCEMENT OF ACTIONS

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4.28.020	Jurisdiction acquired, when.
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Rules of court: CR 3; CR 4; CR 4.1; CR 5; and CR 6.

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Foreign corporations, actions against: RCW 23A.32.100.

Nonadmitted foreign corporations, actions against: Chapter 23A.36 RCW.

Proceedings as to mentally ill: Chapter 71.05 RCW.

Publication of legal notices: Chapter 65.16 RCW.

Service of papers on foreign corporation: RCW 23A.32.100.

Service of process on

foreign savings and loan association: RCW 33.32.050.

nonadmitted foreign corporation: RCW 23A.36.040.

nonresident motor vehicle operator: RCW 46.64.040.

Sheriff's fees for service of process and other official services: RCW 36.18.040.

4.28.011 Tolling statute of limitations—Action deemed commenced, when. See RCW 4.16.170.

4.28.020 Jurisdiction acquired, when. From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings. [1984 c 76 § 2; 1895 c 86 § 4; 1893 c 127 § 15; RRS § 238.]

4.28.080 Summons, how served. The summons shall be served by delivering a copy thereof, as follows:

(1) If the action be against any county in this state, to the county auditor or, during normal office hours, to the deputy auditor, or in the case of a charter county, summons may be served upon the agent, if any, designated by the legislative authority.

(2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.

(3) If against a school or fire district, to the superintendent or commissioner thereof or by leaving the same in his or her office with an assistant superintendent, deputy commissioner, or business manager during normal business hours.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance within this state.

(7) If against a foreign or alien insurance company, as provided in chapter 48.05 RCW.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(9) If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary,

stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

(10) If the suit be against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

(14) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his usual abode with some person of suitable age and discretion then resident therein.

Service made in the modes provided in this section shall be taken and held to be personal service. [1987 c 361 § 1; 1977 ex.s. c 120 § 1; 1967 c 11 § 1; 1957 c 202 § 1; 1893 c 127 § 7; RRS § 226, part. FORMER PART OF SECTION: 1897 c 97 § 1 now codified in RCW 4.28.081.]

Rules of court: Service of process—CR 4(d), (e).

Severability—1977 ex.s. c 120: "If any provision of this 1977 amendatory 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." [1977 ex.s. c 120 § 3.] This applies to the 1977 ex.s. c 120 amendments to RCW 4.28.080 and 28A.02.070.

Service of process on

foreign corporation: RCW 23A.32.100.

foreign savings and loan association: RCW 33.32.050.

nonadmitted foreign corporation: RCW 23A.36.040.

nonresident motor vehicle operator: RCW 46.64.040.

4.28.081 Summons, how served—When corporation in hands of receiver. Whenever any domestic or foreign corporation, which has been doing business in this state, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof. [1897 c 97 § 1; RRS § 226, part. Formerly RCW 4.28.080(13).]

4.28.090 Service on corporation without officer in state upon whom process can be served. Whenever any corporation, created by the laws of this state, or late territory of Washington, does not have an officer in this state upon whom legal service of process can be made, an action or proceeding against the corporation may be commenced in any county where the cause of action may arise, or the corporation may have property, and service may be made upon the corporation by depositing a copy of the summons, writ, or other process, in the office of the secretary of state, which shall be taken, deemed and

treated as personal service on the corporation: *Provided*, A copy of the summons, writ, or other process, shall be deposited in the post office, postage paid, directed to the secretary or other proper officer of the corporation, at the place where the main business of the corporation is transacted, when the place of business is known to the plaintiff, and be published at least once a week for six weeks in a newspaper of general circulation at the seat of government of this state, before the service shall be deemed perfect. [1985 c 469 § 1; 1893 c 127 § 8; RRS § 227.]

4.28.100 Service of summons by publication—
When authorized. When the defendant cannot be found within the state, and upon the filing of an affidavit of the plaintiff, his agent, or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the summons (substantially in the form prescribed in RCW 4.28.110) and complaint in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in any of the following cases:

- (1) When the defendant is a foreign corporation, and has property within the state;
- (2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent;
- (3) When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action;
- (4) When the action is for divorce in the cases prescribed by law;
- (5) When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;
- (6) When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;
- (7) When the action is against any corporation, whether private or municipal, organized under the laws of the state, and the proper officers on whom to make service do not exist or cannot be found;
- (8) When the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to property in this state. [1981 c 331 § 13; 1953 c 102 § 1. Prior: 1929 c 81 § 1; 1915 c 45 § 1; 1893 c 127 § 9; RRS § 228.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

4.28.110 Manner of publication and form of summons. The publication shall be made in a newspaper of

general circulation in the county where the action is brought once a week for six consecutive weeks: *Provided*, That publication of summons shall not be made until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication. The summons must be subscribed by the plaintiff or his attorney or attorneys. The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired, to appear and answer the complaint within sixty days from the date of the first publication of the summons; and the summons for publication shall also contain a brief statement of the object of the action. The summons for publication shall be substantially as follows:

In the superior court of the State of Washington for the county of -----

-----, Plaintiff,
vs. No. -----
-----, Defendant.

The State of Washington to the said (naming the defendant or defendants to be served by publication):

You are hereby summoned to appear within sixty days after the date of the first publication of this summons, to wit, within sixty days after the ----- day of -----, 1-----, and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff -----, and serve a copy of your answer upon the undersigned attorneys for plaintiff -----, at his (or their) office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. (Insert here a brief statement of the object of the action.)

----- ,
Plaintiff's Attorneys.
P.O. Address -----
County -----
Washington.

[1985 c 469 § 2; 1895 c 86 § 2; 1893 c 127 § 10; RRS § 233.]

Publication of legal notices: Chapter 65.16 RCW.

4.28.120 Publication of notice in eminent domain proceedings. If a party having or claiming a share or interest in or lien upon any property sought to be appropriated for public use be unknown, and such fact be made to appear by affidavit filed in the office of the clerk of the court, the notice required by law in such cases may be served by publication as in the case of nonresident owners, and such notice shall be directed by name to every owner of a share or interest in or lien upon the property sought to be so appropriated, and generally to all persons unknown having or claiming an interest or estate in the property or any portion thereof, and all such unknown parties shall in all papers and proceedings be designated as "unknown owners," and shall be bound by the provisions and be entitled to the

benefits of the judgment the same as if they had been known and duly named. [1895 c 140 § 1; RRS § 239.]

Eminent domain: Title 8 RCW.

Publication of legal notices: Chapter 65.16 RCW.

4.28.140 Affidavit as to unknown heirs. Upon presenting an affidavit to the court or judge, showing to his satisfaction that the heirs of such deceased person are proper parties to the action, and that their names and residences cannot with use of reasonable diligence be ascertained, such court or judge may grant an order that service of the summons in such action be made on such "Unknown heirs" by publication thereof in the same manner as in actions against nonresident defendants. [1903 c 144 § 2; RRS § 230.]

Rules of court: Cf. CR 10(a).

4.28.150 Title of cause—Unknown claimants—Service by publication. In any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien, or interest in the lands in controversy, the following, viz.: "Also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein." And service of summons may be had upon all such unknown persons or parties defendant by publication as provided by law in case of nonresident defendants. [1903 c 144 § 3; RRS § 231.]

Publication of legal notices: Chapter 65.16 RCW.

4.28.160 Rights of unknown claimants and heirs—Effect of judgment—Lis pendens. All such unknown heirs of deceased persons, and all such unknown persons or parties, so served by publication as in RCW 4.28.150, provided, shall have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the action shall proceed against such unknown heirs, or unknown persons or parties, in the same manner as against defendants, who are named, upon whom service is made by publication, and with like effect; and any such unknown heirs or unknown persons or parties who have or claim any right, estate, lien, or interest in the said real property in controversy, at the time of the commencement of the action, duly served as aforesaid, shall be bound and concluded by the judgment in such action, if the same is in favor of the plaintiff therein as effectually as if the action was brought against such defendant by his or her name and constructive service of summons obtained: *Provided, however,* That such judgment shall not bind such unknown heirs, or unknown persons or parties, defendant, unless the plaintiff shall file a notice of lis pendens in the office of the auditor of each county in which said real estate is located, in the manner provided by law, before

commencing the publication of said summons. [1903 c 144 § 4; RRS § 232.]

4.28.180 Personal service out of state. Personal service of summons or other process may be made upon any party outside the state. If upon a citizen or resident of this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of personal service within this state; otherwise it shall have the force and effect of service by publication. The summons upon the party out of the state shall contain the same and be served in like manner as personal summons within the state, except it shall require the party to appear and answer within sixty days after such personal service out of the state. [1959 c 131 § 1; 1895 c 86 § 3; 1893 c 127 § 11; RRS § 234.]

Rules of court: Cf. CR 4(e), CR 12(a), CR 82(a).

Service of process on nonresident motor vehicle operator: RCW 46.64.040.

4.28.185 Personal service out of state—Acts submitting person to jurisdiction of courts—Saving. (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

- (a) The transaction of any business within this state;
- (b) The commission of a tortious act within this state;
- (c) The ownership, use, or possession of any property whether real or personal situated in this state;
- (d) Contracting to insure any person, property or risk located within this state at the time of contracting;
- (e) The act of sexual intercourse within this state with respect to which a child may have been conceived;
- (f) Living in a marital relationship within this state notwithstanding subsequent departure from this state, as to all proceedings authorized by chapter 26.09 RCW, so long as the petitioning party has continued to reside in this state or has continued to be a member of the armed forces stationed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this state.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

(4) Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the state.

(5) In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be taxed

and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

(6) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law. [1977 c 39 § 1; 1975-'76 2nd ex.s. c 42 § 22; 1959 c 131 § 2.]

Rules of court: Cf. CR 4(e), CR 12(a), CR 82(a).

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Uniform parentage act: Chapter 26.26 RCW.

4.28.200 Right of one constructively served to appear and defend or reopen. If the summons is not served personally on the defendant in the cases provided in RCW 4.28.110 and 4.28.180, he or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action and, except in an action for divorce, the defendant or his representative may in like manner be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just; and if the defense is successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs. [1893 c 127 § 12; RRS § 235.]

4.28.210 Appearance, what constitutes. A defendant appears in an action when he answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his appearance. After appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him. Every such appearance made in an action shall be deemed a general appearance, unless the defendant in making the same states that the same is a special appearance. [1893 c 127 § 16; RRS § 241.]

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

4.28.290 Assessment of damages without answer. A defendant who has appeared may, without answering, demand in writing an assessment of damages, of the amount which the plaintiff is entitled to recover, and thereupon such assessment shall be had or any such amount ascertained in such manner as the court on application may direct, and judgment entered by the clerk for the amount so assessed or ascertained. [1893 c 127 § 25; RRS § 251.]

4.28.320 Lis pendens in actions affecting title to real estate. In an action affecting the title to real property the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a writ of attachment of property shall be issued, or at any time afterwards, the plaintiff or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief at the time of filing his answer, or at any time afterwards, if the same be intended to affect real property, may file with the auditor of each county in which

the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: *Provided, however,* That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record. [1893 c 127 § 17; RRS § 243.]

4.28.325 Lis pendens in actions in United States district courts affecting title to real estate. In an action in a United States district court for any district in the state of Washington affecting the title to real property in the state of Washington, the plaintiff, at the time of filing the complaint, or at any time afterwards, or a defendant, when he sets up an affirmative cause of action in his answer, or at any time afterward, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: *Provided, however,* That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the

notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record. [1963 c 137 § 1.]

4.28.330 Notice to alien property custodian. In any court or administrative action or proceeding within this state, involving property within this state or any interest therein, in which service of process is required to be made upon or notice thereof given to any person who is in a designated enemy country or enemy-occupied territory, in addition to the service of process upon or giving of notice to the person as required by any law, statute or rule applicable to the action or proceeding, a copy of the process or notice shall be sent by registered mail to the alien property custodian, Washington, District of Columbia. [1943 c 62 § 1; Rem. Supp. 1943 § 254-1.]

4.28.340 Notice to alien property custodian—Definitions. For the purposes of RCW 4.28.330 through 4.28.350:

(1) "Person" includes any individual, partnership, association and corporation;

(2) "Designated enemy country" means any foreign country as to which the United States has declared the existence of a state of war and any other country with which the United States is at war in the future;

(3) "Enemy-occupied territory" means any place under the control of any designated enemy country or any place with which, by reason of the existence of a state of war, the United States does not maintain postal communication. [1943 c 62 § 2; Rem. Supp. 1943 § 254-2.]

4.28.350 Notice to alien property custodian—Duration. RCW 4.28.330 and 4.28.340 shall remain in force only so long as a state of war shall exist between the United States and the designated enemy country involved in the action or proceeding described in RCW 4.28.330. [1943 c 62 § 3; Rem. Supp. 1943 § 254-3.]

4.28.360 Personal injury actions—Complaint not to include statement of damages—Request for statement. In any civil action for personal injuries, the complaint shall not contain a statement of the damages sought but shall contain a prayer for damages as shall be determined. A defendant in such action may at any time request a statement from the plaintiff setting forth separately the amounts of any special damages and general damages sought. Not later than fifteen days after service of such request to the plaintiff, the plaintiff shall have served the defendant with such statement. [1975-'76 2nd ex.s. c 56 § 2.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

Actions and procedure for injuries resulting from health care: Chapter 7.70 RCW.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

Chapter 4.32 PLEADINGS

Sections	
4.32.070	Objections may be taken by answer.
4.32.120	Setoff against beneficiary of trust estate.
4.32.130	Setoff in probate cases brought by personal representatives.
4.32.140	Setoff in probate cases against personal representatives.
4.32.150	Setoff must be pleaded.
4.32.170	Answer may be stricken.
4.32.250	Effect of minor defects in pleading.

4.32.070 Objections may be taken by answer. When any of the matters enumerated in *RCW 4.32.050 do not appear upon the face of the complaint, the objection may be taken by answer. [Code 1881 § 79; 1877 p 18 § 79; 1854 p 139 § 42; RRS § 261.]

*Reviser's note: RCW 4.32.050 was repealed by 1984 c 76 § 11.

4.32.120 Setoff against beneficiary of trust estate. If the plaintiff be a trustee to any other, or if the action be in a name of the plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested. [Code 1881 § 498; 1877 p 107 § 502; RRS § 267.]

4.32.130 Setoff in probate cases brought by personal representatives. In actions brought by executors and administrators, demands against their testators and intestates, and belonging to defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased. [Code 1881 § 499; 1877 p 107 § 503; RRS § 268.]

4.32.140 Setoff in probate cases against personal representatives. In actions against executors and administrators and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates or those whom they represent, in the same manner as the person so represented would have been entitled to set off the same, in an action against them. [Code 1881 § 501; 1877 p 107 § 505; RRS § 270.]

4.32.150 Setoff must be pleaded. To entitle a defendant to a setoff he must set the same forth in his answer. [Code 1881 § 502; 1877 p 108 § 506; RRS § 271.]

4.32.170 Answer may be stricken. Sham, frivolous and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose. [Code 1881 § 85; 1877 p 19 § 85; 1869 p 21 § 83; 1854 p 140 § 47; RRS § 275.]

4.32.250 Effect of minor defects in pleading. A notice or other paper is valid and effectual though the title

of the action in which it is made is omitted, or it is defective either in respect to the court or parties, if it intelligently refers to such action or proceedings; and in furtherance of justice upon proper terms, any other defect or error in any notice or other paper or proceeding may be amended by the court, and any mischance, omission or defect relieved within one year thereafter; and the court may enlarge or extend the time, for good cause shown, within which by statute any act is to be done, proceeding had or taken, notice or paper filed or served, or may, on such terms as are just, permit the same to be done or supplied after the time therefor has expired, except that the time for bringing a writ of error or appeal shall in no case be enlarged, or a party permitted to bring such writ of error or appeal after the time therefor has expired. [1893 c 127 § 24; RRS § 250.]

Rules of court: Cf. CR 6(b), RAP 5.2, 18.22.

Chapter 4.36 GENERAL RULES OF PLEADING

Sections

4.36.070	Pleading judgments.
4.36.080	Conditions precedent, how pleaded.
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4.36.070 Pleading judgments. In pleading a judgment or other determination of a court or office of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction. [Code 1881 § 96; 1877 p 21 § 96; 1854 p 142 § 58; RRS § 287.]

Rules of court: Cf. CR 9(e).

4.36.080 Conditions precedent, how pleaded. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. [Code 1881 § 97; 1877 p 21 § 97; 1854 p 142 § 59; RRS § 288.]

Rules of court: Cf. CR 9(c).

4.36.120 Libel or slander, how pleaded. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff, of the defamatory matter out of which the cause arose, but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation

be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken. [Code 1881 § 99; 1877 p 22 § 99; 1854 p 142 § 61; RRS § 292.]

Rules of court: Cf. CR 8.

4.36.130 Answer in justification and mitigation. In an action mentioned in RCW 4.36.120, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he proves the justification or not, he may give in evidence the mitigating circumstances. [Code 1881 § 100; 1877 p 22 § 100; 1854 p 143 § 62; RRS § 293.]

4.36.140 Answer in action to recover property distrained. In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing the damage thereon, shall be good, without setting forth the title to such real property. [Code 1881 § 101; 1877 p 22 § 101; 1854 p 143 § 63; RRS § 295.]

4.36.170 Material allegation defined. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient. [Code 1881 § 104; 1877 p 22 § 104; 1854 p 143 § 65; RRS § 298.]

4.36.210 Variance in action to recover personal property. Where the plaintiff in an action to recover the possession of personal property on a claim of being the owner thereof, shall fail to establish on trial such ownership, but shall prove that he is entitled to the possession thereof, by virtue of a special property therein, he shall not thereby be defeated of his action, but shall be permitted to amend, on reasonable terms his complaint, and be entitled to judgment according to the proof in the case. [Code 1881 § 108; 1877 p 23 § 108; 1869 p 27 § 106; 1856 p 10 § 11; RRS § 302.]

4.36.240 Harmless error disregarded. The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect. [Code 1881 § 113; 1877 p 24 § 113; 1854 p 144 § 71; RRS § 307.]

Rules of court: Cf. RAP 2.4(a), 18.22.

Chapter 4.40 ISSUES

Sections

4.40.010	Issues defined—Kinds.
4.40.050	Trial of issue of law.
4.40.060	Trial of certain issues of fact—Jury.
4.40.070	Trial of other issues of fact.

4.40.010 Issues defined—Kinds. Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other, they are of two kinds—first, of law; and second, of fact. [1893 c 127 § 28; Code 1881 § 200; 1877 p 42 § 204; 1854 p 163 § 179; RRS § 309.]

4.40.050 Trial of issue of law. An issue of law shall be tried by the court, unless it is referred as provided by the statutes relating to referees. [1893 c 127 § 32; Code 1881 § 204; 1877 p 42 § 208; 1854 p 164 § 183; RRS § 313.]

Trial before referee: Chapter 4.48 RCW.

4.40.060 Trial of certain issues of fact—Jury. An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees. [1893 c 127 § 33; Code 1881 § 204; 1877 p 42 § 208; 1873 p 52 § 206; 1869 p 50 § 208; 1854 p 164 § 183; RRS § 314.]

4.40.070 Trial of other issues of fact. Every other issue of fact shall be tried by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or referred. [1893 c 127 § 34; RRS § 315.]

**Chapter 4.44
TRIAL**

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District court, civil trial: Chapter 12.12 RCW.

Juries

*crimes relating to: Chapter 9.51 RCW.
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4.44.020 Notice of trial—Note of issue. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least three days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least three days before the day of setting such causes for trial file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.

In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least three days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court.

When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice on his part. [1893 c 127 § 35; RRS § 319.]

Rules of court: Cf. CR 40(a).

4.44.060 Proceedings in trial by court—Findings deemed verdict. The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reason as far as applicable, and a new trial

granted. [Code 1881 § 247; 1877 p 51 § 251; 1869 p 60 § 251; RRS § 368.]

4.44.070 Findings and conclusions, how made. Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or at the option of the court, oral, and entered in the judge's minutes. [Code 1881 § 222; 1877 p 47 § 226; 1869 p 56 § 226; RRS § 341.]

Rules of court: Cf. CR 52(a).

4.44.080 Questions of law to be decided by court. All questions of law including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. [Code 1881 § 223; 1877 p 47 § 227; 1869 p 56 § 227; RRS § 342.]

Rules of court: Cf. ER 104 and ER 1008.

4.44.090 Questions of fact for jury. All questions of fact other than those mentioned in RCW 4.44.080, shall be decided by the jury, and all evidence thereon addressed to them. [Code 1881 § 224; 1877 p 47 § 228; 1869 p 56 § 228; RRS § 343.]

Rules of court: Cf. ER 1008.

Charging juries: State Constitution Art. 4 § 16.

Right to trial by jury: State Constitution Art. 1 § 21; RCW 4.48.010.

4.44.095 Right to jury trial upon an issue of fact in an action at law. See RCW 4.48.010.

Rules of court: Cf. CR 38(a).

4.44.110 Jury fee part of taxable costs. The jury fee paid by the party demanding a trial by jury shall be a part of the taxable costs in such action. [1961 c 304 § 3; 1903 c 43 § 2; RRS § 317.]

4.44.120 Impanelling jury—Number. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall draw the required number of names for purposes of voir dire examination. Any necessary additions to the panel shall be drawn from the clerk's list of qualified jurors. The clerk shall thereupon prepare separate ballots and deposit them in the trial jury box, and draw such ballots separately therefrom, as in the case of the regular panel. The jury shall consist of six persons, unless the parties in their written demand for jury demand that the jury be twelve in number or consent to a less number. The parties may consent to a jury less than six in number but not less than three, and such consent shall be entered by the clerk on the minutes of the trial. [1972 ex.s. c 57 § 3; Code 1881 § 206; 1877 p 43 § 210; 1869 p 51 § 210; 1854 p 164 § 185; RRS § 323.]

Rules of court: Cf. CR 48.

Juries, district courts: Chapter 12.12 RCW.

4.44.130 Challenges—Kind and number. Either party may challenge the jurors. The challenge shall be to individual jurors, and be peremptory or for cause. Each party shall be entitled to three peremptory challenges. When there is more than one party on either side, the parties need not join in a challenge for cause; but, they shall join in a peremptory challenge before it can be made. If the court finds that there is a conflict of interests between parties on the same side, the court may allow each conflicting party up to three peremptory challenges. [1969 ex.s. c 37 § 1; Code 1881 § 207; 1877 p 43 § 211; 1854 p 165 § 186; RRS § 324.]

4.44.140 Peremptory challenges defined. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him. [Code 1881 § 208; 1877 p 43 § 212; 1869 p 51 § 212; RRS § 325.]

4.44.150 Challenges for cause defined. A challenge for cause is an objection to a juror, and may be either:

(1) General; that the juror is disqualified from serving in any action; or

(2) Particular; that he is disqualified from serving in the action on trial. [Code 1881 § 209; 1877 p 43 § 213; 1869 p 51 § 213; RRS § 326.]

4.44.160 General causes of challenge. General causes of challenge are:

(1) A conviction for a felony.

(2) A want of any of the qualifications prescribed by law for a juror.

(3) Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror in any action. [1975 1st ex.s. c 203 § 2; Code 1881 § 210; 1877 p 44 § 214; 1869 p 52 § 214; RRS § 327.]

Qualifications of jurors: RCW 2.36.070

4.44.170 Particular causes of challenge. Particular causes of challenge are of three kinds:

(1) For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

(2) For the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

(3) For the existence of a defect in the functions or organs of the body which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the party challenging. [1975 1st ex.s. c 203 § 3; Code 1881 § 211; 1877 p 44 § 215; 1869 p 52 § 215; RRS § 329.]

Reviser's note: The word "code" appeared in Code 1881 § 211.

Qualification of jurors: RCW 2.36.070.

4.44.180 Implied bias defined. A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

(1) Consanguinity or affinity within the fourth degree to either party.

(2) Standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages, of the adverse party, or being surety or bail in the action called for trial, or otherwise, for the adverse party.

(3) Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the state against either party, upon substantially the same facts or transaction.

(4) Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation. [Code 1881 § 212; 1877 p 44 § 216; 1869 p 52 § 216; 1854 p 165 § 187; RRS § 330.]

4.44.190 Challenge for actual bias. A challenge for actual bias may be taken for the cause mentioned in RCW 4.44.170(2). But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially. [Code 1881 § 213; 1877 p 44 § 217; 1869 p 53 § 217; RRS § 331.]

4.44.210 Peremptory challenges, how taken. The jurors having been examined as to their qualifications, first by the plaintiff and then by the defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to wit:

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory challenges shall be exhausted. The panel being filled and passed for cause, after said challenge shall have been made by either party, a refusal to challenge by either party in the said order of alternation, shall not defeat the adverse party of his full number of challenges, but such refusal on the part of the plaintiff to exercise his challenge in proper turn, shall conclude him as to the jurors once accepted by him, and if his right be not exhausted, his further challenges shall be confined, in his proper turn, to talesmen only. [Code 1881 § 215; 1877 p 45 § 219; 1869 p 53 § 219; RRS § 333.]

4.44.220 Order of taking challenges. The challenges of either party shall be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

(1) For general disqualification.

(2) For implied bias.

(3) For actual bias.

(4) Peremptory. [Code 1881 § 216; 1877 p 45 § 220; 1869 p 53 § 220; RRS § 334.]

4.44.230 Exceptions to challenges—Determination. The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the facts. [Code 1881 § 217; 1877 p 45 § 221; 1869 p 53 § 221; RRS § 335.]

4.44.240 Trial of challenge. Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise, it shall be disallowed. [Code 1881 § 218; 1877 p 45 § 222; 1869 p 54 § 222; RRS § 336.]

4.44.250 Challenge, exception, denial may be oral. The challenge, the exception and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side. [Code 1881 § 219; 1877 p 45 § 223; 1869 p 54 § 223; RRS § 337.]

4.44.260 Oath of jurors. As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance that they and each of them, will well, and truly try, the matter in issue between the plaintiff and defendant, and a true verdict give, according to the law and evidence as given them on the trial. [Code 1881 § 220; 1877 p 46 § 224; 1869 p 54 § 224; RRS § 338.]

Oaths and mode of administering: State Constitution Art. 1 § 6.

4.44.270 View of premises by jury. Whenever in the opinion of the court it is proper that the jury should have a view of real property which is the subject of litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent no person other than the judge, or person so appointed, shall speak to them on any subject connected with the trial. [Code 1881 § 225; 1877 p 47 § 229; 1869 p 56 § 229; RRS § 344.]

4.44.280 Admonitions to jurors. The jurors may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to

them. [1957 c 7 § 5; Code 1881 § 226; 1877 p 47 § 230; 1869 p 56 § 230; RRS § 345.]

Care of jury while deliberating: RCW 4.44.300.

Separation of jury: RCW 2.36.140.

4.44.290 Procedure when juror becomes ill. If after the formation of the jury, and before verdict, a juror become sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn and the trial begin anew; or the jury may be discharged and a new jury then or afterwards formed. [Code 1881 § 227; 1877 p 48 § 231; 1869 p 56 § 231; RRS § 347.]

4.44.300 Care of jury while deliberating. After hearing the charge, the jury may either decide in the jury box or retire for deliberation. If they retire, they must be kept together in a room provided for them, or some other convenient place under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the best of his ability, keep the jury thus separate from other persons, without drink, except water, and without food, except [as] ordered by the court. He must not suffer any communication to be made to them, nor make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed on. [Code 1881 § 229; 1877 p 48 § 233; 1869 p 57 § 233; 1854 p 166 § 194; RRS § 349.]

Rules of court: Cf. CR 47(i), 51(h).

Admonitions to jury, separation: RCW 4.44.280.

Separation of jury: RCW 2.36.140.

4.44.310 Expense of keeping jury. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court orders them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county. [Code 1881 § 230; 1877 p 48 § 234; 1869 p 57 § 234; RRS § 350.]

4.44.330 Discharge of jury without verdict. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing. [Code 1881 § 233; 1877 p 48 § 237; 1869 p 58 § 237; RRS § 353.]

4.44.340 Effect of discharge of jury. In all cases where a jury are discharged or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial or after the cause is submitted to them, the action shall thereafter be for trial anew. [1891 c 60 § 2; Code 1881 § 234; 1877 p 49 § 238; 1869 p 58 § 238; RRS § 354.]

4.44.350 Court recess while jury is out. While the jury is absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. [1957 c 9 § 2; Code 1881 § 235; 1877 p 49 § 239; 1869 p 58 § 239; 1854 p 166 § 197; RRS § 355.]

4.44.360 Proceedings when jury have agreed. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear, the rest shall be discharged without giving a verdict. [Code 1881 § 236; 1877 p 49 § 240; 1869 p 58 § 240; RRS § 356.]

4.44.370 Manner of giving verdict. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answers in the affirmative, he shall on being required declare the same. [Code 1881 § 237; 1877 p 49 § 241; 1869 p 58 § 241; RRS § 357.]

4.44.380 Number of jurors required to render verdict. In all trials by juries of six in the superior court, except criminal trials, when five of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the foreman, and the verdict shall stand as the verdict of the whole jury, and have all the force and effect of a verdict agreed to by six jurors. In cases where the jury is twelve in number, a verdict reached by ten shall have the same force and effect as described above, and the same procedures shall be followed. [1972 ex.s. c 57 § 4; 1895 c 36 § 1; RRS § 358.]

Trial by jury: State Constitution Art. 1 § 21.

4.44.390 Jury may be polled. When the verdict is returned into court either party may poll the jury, and if the number of jurors required for verdict answer that it is the verdict said verdict shall stand. In case the number of jurors required for verdict do not answer in the affirmative the jury shall be returned to the jury room for further deliberation. [1972 ex.s. c 57 § 6; 1895 c 36 § 2; RRS § 359.]

4.44.400 Correction of informal verdict—Polling jury. When a verdict is given and before it is filed, the jury may be polled at the request of either party, for which purpose each shall be asked whether it is his verdict; if any juror answer in the negative the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out. [Code 1881 § 238; 1877 p 49 § 242; 1869 p 58 § 242; RRS § 360.]

Reviser's note: For later enactment regarding the polling of a jury, see RCW 4.44.390.

4.44.410 General or special verdicts. The verdict of a jury is either general or special. [1984 c 76 § 4; Code

1881 § 240; 1877 p 49 § 244; 1869 p 59 § 244; 1854 p 167 § 198; RRS § 362.]

Rules of court: See CR 49.

4.44.420 Verdict in actions for specific personal property. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claims a return thereof, the jury shall assess the value of the property if their verdict be in favor of the plaintiff, or if they find in favor of the defendant and that he is entitled to a return thereof, they may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property. [Code 1881 § 241; 1877 p 50 § 245; 1869 p 59 § 245; 1854 p 167 § 199; RRS § 363.]

4.44.440 Special verdict controls. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly. [Code 1881 § 243; 1877 p 50 § 247; 1869 p 60 § 247; 1854 p 167 § 201; RRS § 365.]

Rules of court: Cf. CR 49(b).

4.44.450 Jury to assess amount of recovery. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a setoff for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the pleadings. [1891 c 60 § 3; Code 1881 § 244; 1877 p 50 § 248; 1869 p 60 § 248; 1854 p 167 § 202; RRS § 366.]

4.44.460 Receiving verdict and discharging jury. When the verdict is given and is such as the court may receive, and if no juror disagrees or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given. [Code 1881 § 239; 1877 p 49 § 243; 1869 p 59 § 243; RRS § 361.]

4.44.470 Court may fix amount of bond in civil actions. Whenever by statute a bond or other security is required for any purpose in an action or other proceeding in a court of record and if the party shall apply therefor, the court shall have power to prescribe the amount of the bond or other security notwithstanding any requirement of the statute; and in every such case money in an amount prescribed by the court may be deposited with the clerk in lieu of a bond. After a bond or other security shall have been given, the court in its discretion may require additional security either on its own motion or upon motion of an interested party or person.

The courts shall exercise care to require adequate though not excessive security in every instance. [1927 c 272 § 1; RRS § 958-4.]

Suretyship: Chapters 19.72, 48.28 RCW.

4.44.480 Deposits in court—Order. When it is admitted by the pleading or examination of a party, that he has in his possession, or under his control, any money, or other thing capable of delivery, which being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court. [Code 1881 § 195; 1877 p 41 § 199; 1869 p 49 § 203; 1854 p 163 § 174; RRS § 745.]

Rules of court: Cf. CR 67.

4.44.490 Deposits in court—Enforcement of order. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court. [Code 1881 § 196; 1877 p 41 § 200; 1869 p 49 § 200; 1854 p 163 § 175; RRS § 746.]

Rules of court: Cf. CR 67.

4.44.500 Deposits in court—Custody of money deposited. Money deposited, or paid into a court in an action, shall not be loaned out, unless, with the consent of all parties having an interest in, or making claim to the same. [Code 1881 § 197; 1877 p 41 § 201; 1869 p 49 § 201; 1854 p 163 § 176; RRS § 747.]

Rules of court: Cf. CR 67.

Chapter 4.48

TRIAL BEFORE REFEREE

Sections	
4.48.010	Reference by consent—Right to jury trial—Referee may not preside—Parties' written consent constitutes waiver of right.
4.48.020	Reference without consent.
4.48.030	To whom reference may be ordered.
4.48.040	Qualifications of referees.
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4.48.010 Reference by consent—Right to jury trial—Referee may not preside—Parties' written consent constitutes waiver of right. The court shall order all or any of the issues in a civil action, whether of fact or law, or both, referred to a referee upon the written consent of the parties which is filed with the clerk. Any party shall have the right in an action at law, upon an issue of fact, to demand a trial by jury. No referee appointed under this chapter may preside over a jury trial. The written consent of the parties constitutes a waiver of the right of trial by jury by any party having the right. [1984 c 258 § 512; Code 1881 § 248; 1854 p 168 § 206; RRS § 369. Formerly RCW 4.44.100, part, and 4.48.010.]

Rules of court: Cf. CR 38(a).

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.020 Reference without consent. Where the parties do not consent, the court may upon the application of either party, direct a reference in all cases formerly cognizable in chancery in which reference might be made:

(1) When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or,

(2) When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or,

(3) When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or,

(4) When it is necessary for the information of the court in a special proceeding. [1984 c 258 § 513; Code 1881 § 249; 1877 p 51 § 253; 1869 p 61 § 253; 1854 p 168 § 207; RRS § 370.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.030 To whom reference may be ordered. A reference may be ordered to any person or persons not exceeding three, agreed upon by the parties. If the reference is not agreed to by the parties, the court may appoint one or more persons, not exceeding three. [1984 c 258 § 514; Code 1881 § 250; 1877 p 51 § 254; 1869 p 61 § 254; 1854 p 168 § 208; RRS § 371.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.040 Qualifications of referees. A person appointed by the court as a referee or who serves as a referee with the consent of the parties shall be:

(1) Qualified as a juror as provided by statute.

(2) Competent as juror between the parties.

(3) A duly admitted and practicing attorney. [1984 c 258 § 515; Code 1881 § 251; 1877 p 51 § 255; 1859 p 61 § 255; 1854 p 169 § 209; RRS § 372.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.050 Challenges to referees. If a referee is appointed by the court, each party shall have the same right to challenge the appointment. Challenges shall be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge. [1984 c 258 § 516; Code 1881 § 252; 1877 p 52 § 256; 1869 p 61 § 256; RRS § 373.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.060 Trial procedure—Powers of referee—Referee to provide clerical personnel. (1) Subject to the limitations and directions prescribed in the order of reference, the trial conducted by a referee shall be conducted in the same manner as a trial by the court. Unless waived in whole or in part, the referee shall apply the rules of pleading, practice, procedure, and evidence used in the superior courts of this state. The referee shall have the same power to grant adjournments, administer oaths, preserve order, punish all violations thereof upon such trial, compel the attendance of witnesses, and to punish them for nonattendance or refusal to be sworn or testify, as is possessed by the court.

(2) A referee appointed under RCW 4.48.010 shall provide clerical personnel necessary for the conduct of the proceeding, including a court reporter. [1984 c 258 § 517; Code 1881 § 253; 1877 p 52 § 257; 1869 p 62 § 257; 1854 p 169 § 210; RRS § 374.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.070 Referee's report—Contents—Evidence, filing of, frivolous. The report of a referee appointed by the court under RCW 4.48.020 shall state the facts found, and when the order of reference includes an issue of law, it shall state the conclusions of law separately from the facts. The referee shall file with the report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial and the party offering the same excepts to the decision rejecting such evidence at the time, the exceptions shall be noted by the referees and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous and inadmissible, require the party at whose instance it was taken and reported, to pay all costs and disbursements thereby incurred. [1984 c 258 § 518; Code 1881 § 254; 1877 p 52 § 258; 1869 p 62 § 258; 1854 p 169 § 210; RRS § 375.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.080 Proceedings on filing of report. The report of a referee appointed by the court under RCW 4.48.020 shall be filed with the clerk within twenty days after the trial concludes. Either party may, within such time as may be prescribed by the rules of court, or by special

order, move to set the same aside, or for judgment thereon, or such order or proceeding as the nature of the case may require. [1984 c 258 § 519; 1957 c 9 § 3; Code 1881 § 255; 1877 p 52 § 259; 1869 p 62 § 259; RRS § 376.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.090 Judgment on referee's report. The court may affirm or set aside the report of a referee appointed under RCW 4.48.020 either in whole or in part. If it affirms the report it shall give judgment accordingly. If the report be set aside, either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside, to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of the jury. [1984 c 258 § 520; Code 1881 § 256; 1877 p 52 § 260; 1869 p 62 § 260; RRS § 377.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.100 Compensation of referee—Trial expense—Obligation of parties, when. (1) The compensation of a referee appointed under RCW 4.48.020 shall be the same as that established for a superior court judge pro tempore under RCW 2.08.180.

(2) If a referee is appointed pursuant to RCW 4.48.010, the referee's compensation shall be at the rate prescribed by subsection (1) of this section, unless otherwise agreed to by the parties.

(3) Payment of the compensation of a referee appointed under RCW 4.48.010 and the expense of the trial before the referee shall be the obligation of the parties. The obligation shall be borne equally unless the parties agree to a different allocation. [1984 c 258 § 524; Code 1881 § 514; 1877 p 109 § 518; 1854 p 202 § 376; RRS § 483.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Supplemental proceedings, fees of referees: RCW 6.32.280.

4.48.110 Referee's proposed report—Copies—Objections, etc.—Request for hearing—Final report—Additional items to be filed—Exception—Copies. (1) Within twenty days after the conclusion of a trial before a referee appointed under RCW 4.48.010, unless a later time is agreed to by the parties, the referee shall mail to each party a copy of the referee's proposed written report. The proposed report shall contain the findings of fact and conclusions of law by the referee and the judgment of the referee.

(2) Within ten days after receipt of the copy of the proposed report, any party may serve written objections and suggested modifications or corrections to the proposed report on the referee and the other parties. The referee shall without delay consider the objections and suggestions and prepare a final written report. If requested by any party, the referee shall conduct a hearing

on the proposed report and any suggested corrections or modifications before preparing the final written report.

(3) Upon completion of the final written report, the referee shall file with the clerk of the superior court:

(a) Copies of all original papers in the action filed with the referee;

(b) Exhibits offered and received or rejected during the trial;

(c) The transcript of the proceedings in the trial; and

(d) The final written report containing the findings of fact and conclusions of law by the referee and the judgment of the referee.

(4) The presiding judge of the superior court may allow the referee to file the final written report under subsection (3) of this section without any of the items listed in subsection (3) (a) through (c) of this section. However, the presiding judge shall require the referee to file those items if a timely notice of appeal of the judgment is filed.

(5) When the referee files the written report under subsection (3) of this section, the referee shall also mail to each party a copy of the report. [1984 c 258 § 521.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.120 Termination of referral—Judgment—Review of referee's decision. (1) Upon receipt by the clerk of the court of the final written report filed under RCW 4.48.110, the referral of the action shall terminate and the presiding judge of the superior court shall order the judgment contained in the report entered as the judgment of the court in the action. Subsequent motions and other post trial proceedings in the action may be conducted and disposed of by the referee upon order of the presiding judge, in the discretion of the presiding judge, or may otherwise be assigned by the presiding judge.

(2) The decision of a referee entered as provided in this section may be reviewed in the same manner as if the decision was made by the court. [1984 c 258 § 522.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

4.48.130 Notice of trial before referee. (1) If an action is to be tried by a referee appointed under RCW 4.48.010, at least five days before the date set for the trial the referee shall advise the clerk of the court of the time and place set for the trial. The clerk shall post in a conspicuous place in the courthouse a notice that includes the names of the parties to the action, the time and place set for the trial, the name of the referee, and a statement that the proceeding is being held before a referee agreed to by the parties under chapter 4.48 RCW.

(2) A person interested in attending a trial before a referee appointed under RCW 4.48.010 [4.48.010] is entitled to do so as in a trial of a civil action in superior court. Upon request by any person, the referee shall give the person notice of the time and place set for the trial. [1984 c 258 § 523.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 4.52 AGREED CASES

Sections	
4.52.010	Controversies may be submitted without action.
4.52.020	Judgment to be rendered as in other cases.
4.52.030	Enforcement of judgment—Appeal.

4.52.010 Controversies may be submitted without action. Parties to a question in difference which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon as if an action were pending. [Code 1881 § 298; 1877 p 61 § 302; 1869 p 73 § 300; RRS § 378.]

4.52.020 Judgment to be rendered as in other cases. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceedings prior to the trial. The case, the submission and a copy of the judgment shall constitute the judgment roll. [Code 1881 § 299; 1877 p 61 § 303; 1869 p 74 § 301; RRS § 379.]

4.52.030 Enforcement of judgment—Appeal. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal. [Code 1881 § 300; 1877 p 61 § 304; 1869 p 74 § 302; RRS § 380.]

Chapter 4.56 JUDGMENTS—GENERALLY

Sections	
4.56.050	Effect of judgment against executor or administrator.
4.56.060	Judgment in case of setoff—When equal or less than plaintiff's debt.
4.56.070	Judgment in case of setoff—When exceeds plaintiff's debt—Effect of contract assignment.
4.56.075	Judgment in case of setoff—When exceeds plaintiff's debt or affirmative relief required.
4.56.080	Judgment in actions to recover personal property.
4.56.090	Assignment of judgment—Filing.
4.56.100	Satisfaction of judgments for payment of money.
4.56.110	Interest on judgments.
4.56.115	Interest on judgments against state, political subdivisions or municipal corporations—Torts.
4.56.120	Judgment of dismissal or nonsuit, grounds, effect—Other judgments on merits.
4.56.150	Challenge to legal sufficiency of evidence—Judgment in bar or of nonsuit.
4.56.190	Lien of judgment.
4.56.200	Commencement of lien on real estate.
4.56.210	Cessation of lien—Extension prohibited.
4.56.250	Claims for noneconomic damages—Limitation.
4.56.260	Award of future economic damages—Proposal for periodic payments—Security—Satisfaction of judgment.

Enforcement of judgments: Title 6 RCW.

Judgments, financial support of child: RCW 13.34.170.

Liens, cessation, financial support of child: RCW 13.34.170.

Pleading judgments: RCW 4.36.070.

Time limit for decision: State Constitution Art. 4 § 20.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

4.56.050 Effect of judgment against executor or administrator. When a setoff shall be established in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered thereon against the plaintiff shall have the same effect as if the action had been originally commenced by the defendant. [Code 1881 § 500; 1877 p 107 § 504; RRS § 269.]

Rules of court: Cf. CR 54(b).

4.56.060 Judgment in case of setoff—When equal or less than plaintiff's debt. If the amount of the setoff, duly established, be equal to the plaintiff's debt or demand, judgment shall be rendered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only. [Code 1881 § 503; 1877 p 108 § 507; RRS § 271 1/2.]

Rules of court: Cf. CR 54(b).

4.56.070 Judgment in case of setoff—When exceeds plaintiff's debt—Effect of contract assignment. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff when the contract, which is the subject of the action, shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action. [Code 1881 § 504; 1877 p 108 § 508; RRS § 272. FORMER PART OF SECTION: Code 1881 § 303; RRS § 433 now codified as RCW 4.56.075.]

Rules of court: Cf. CR 54(b).

4.56.075 Judgment in case of setoff—When exceeds plaintiff's debt or affirmative relief required. If a setoff established at the trial, exceeds the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appears that the defendant is entitled to any affirmative relief, judgment shall be given accordingly. [Code 1881 § 303; 1877 p 62 § 307; 1869 p 74 § 305; 1854 p 173 § 231; RRS § 433. Formerly RCW 4.56.070, part.]

Rules of court: Cf. CR 54(b).

4.56.080 Judgment in actions to recover personal property. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a

return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. [Code 1881 § 304; 1877 p 62 § 308; 1869 p 75 § 306; 1854 p 173 § 232; RRS § 434.]

4.56.090 Assignment of judgment—Filing. When any judgment has been assigned, the assignment may be filed in the office of the county clerk in the county where the judgment is recorded and a certified copy thereof may be filed in any county where an abstract of such judgment has been filed and from the time of such filing shall be notice of such assignment: *Provided*, That such assignment of a judgment or such certified copy thereof, may not be filed unless it is properly acknowledged before an officer qualified by law to take acknowledgment of deeds. [1935 c 22 § 1, part; 1929 c 60 § 5, part; RRS § 447. Prior: 1893 c 42 § 6.]

Reviser's note: Part relating to the clerk's record index of judgments codified as RCW 4.64.070.

4.56.100 Satisfaction of judgments for payment of money. When any judgment for the payment of money only shall have been paid or satisfied, the clerk of the court in which such judgment was rendered shall note upon the record in the execution docket satisfaction thereof giving the date of such satisfaction upon either the payment to such clerk of the amount of such judgment, costs and interest and any accrued costs by reason of the issuance of any execution, or the filing with such clerk of a satisfaction entitled in such action and identifying the same executed by the judgment creditor or his attorney of record in such action or his assignee acknowledged as deeds are acknowledged. Every satisfaction of judgment and every partial satisfaction of judgment which provides for the payment of money shall clearly designate the judgment creditor and his or her attorney if any, the judgment debtor, the amount or type of satisfaction, whether the satisfaction is full or partial, the cause number, and the date of entry of the judgment. A certificate by such clerk of the entry of such satisfaction by him may be filed in the office of the clerk of any county in which an abstract of such judgment has been filed. When so satisfied by the clerk or the filing of such certificate the lien of such judgment shall be discharged. [1983 c 28 § 1; 1929 c 60 § 6; RRS § 454. Prior: 1893 c 42 § 7.]

4.56.110 Interest on judgments. Interest on judgments shall accrue as follows:

(1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: *Provided*, That said interest rate is set forth in the judgment.

(2) Except as provided under subsection (1) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof: *Provided*, That in any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment

entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. [1983 c 147 § 1; 1982 c 198 § 1; 1980 c 94 § 5; 1969 c 46 § 1; 1899 c 80 § 6; 1895 c 136 § 4; RRS § 457.]

Application—1983 c 147: "The 1983 amendments of RCW 4.56.110 and 4.56.115 apply only to judgments entered after July 24, 1983." [1983 c 147 § 3.]

Effective date—1980 c 94: See note following RCW 4.84.250.

4.56.115 Interest on judgments against state, political subdivisions or municipal corporations—Torts. Judgments founded on the tortious conduct of the state of Washington or of the political subdivisions, municipal corporations, and quasi municipal corporations of the state, whether acting in their governmental or proprietary capacities, shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof: *Provided*, That in any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. [1983 c 147 § 2; 1975 c 26 § 1.]

Application—1983 c 147: See note following RCW 4.56.110.

4.56.120 Judgment of dismissal or nonsuit, grounds, effect—Other judgments on merits. An action in the superior court may be dismissed by the court and a judgment of nonsuit rendered in the following cases:

(1) Upon the motion of the plaintiff, (a) when the case is to be or is being tried before a jury, at any time before the court announces its decision in favor of the defendant upon a challenge to the legal sufficiency of the evidence, or before the jury retire to consider their verdict, (b) when the action, whether for legal or equitable relief, is to be or is being tried before the court without a jury, at any time before the court has announced its decision: *Provided*, That no action shall be dismissed upon the motion of the plaintiff, if the defendant has interposed a setoff as a defense, or seeks affirmative relief growing out of the same transaction, or sets up a counterclaim, either legal or equitable, to the specific property or thing which is the subject matter of the action.

(2) Upon the motion of either party, upon the written consent of the other.

(3) When the plaintiff fails to appear at the time of trial and the defendant appears and asks for a dismissal.

(4) Upon its own motion, when, upon the trial and before the final submission of the case, the plaintiff abandons it.

(5) Upon its own motion, on the refusal or neglect of the plaintiff to make the necessary parties defendants, after having been ordered so to do by the court.

(6) Upon the motion of some of the defendants, when there are others whom the plaintiff fails to prosecute with diligence.

(7) Upon its own motion, for disobedience of the plaintiff to an order of the court concerning the proceedings in the action.

(8) Upon the motion of the defendant, when, upon the trial, the plaintiff fails to prove some material fact or facts necessary to sustain his action, as alleged in his complaint. When judgment of nonsuit is given, the action is dismissed, but such judgment shall not have the effect to bar another action for the same cause. In every case, other than those mentioned in this section, the judgment shall be rendered upon the merits and shall bar another action for the same cause. [1929 c 89 § 1; RRS §§ 408, 409, 410. Formerly RCW 4.56.120, 4.56.130, and 4.56.140. Prior: Code 1881 §§ 286, 287, 288; 1877 p 58 §§ 290, 291, 292; 1869 p 69 §§ 288, 289, 290; 1854 p 171 §§ 223, 224.]

Rules of court: Cf. CR 41(a), (b).

4.56.150 Challenge to legal sufficiency of evidence—Judgment in bar or of nonsuit. In all cases tried in the superior court with a jury, the defendant, at the close of the plaintiff's evidence, or either party, at the close of all the evidence, may challenge the legal sufficiency of the evidence to warrant a verdict in favor of the adverse party, and if the court shall decide as a matter of law the evidence does not warrant a verdict, it shall thereupon discharge the jury from further consideration of the case and enter a judgment in accordance with its decision, which judgment if it be in favor of the defendant shall be a bar to another action by the plaintiff for the same cause: *Provided*, That in case the defendant challenge the legal sufficiency of the evidence at the close of plaintiff's case, and the court shall decide that it is insufficient merely for failure of proof of some material fact, or facts, and that there is reasonable ground to believe that such proof can be supplied in a subsequent action, the court may discharge the jury and enter a judgment of nonsuit as provided in RCW 4.56.120: *And provided, further*, That nothing in this section shall be construed to authorize the court to discharge the jury and determine disputed questions of fact. [1929 c 89 § 2; 1895 c 40 § 1; RRS § 410-1.]

Rules of court: Cf. CR 50(a).

4.56.190 Lien of judgment. The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered. As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983. If a judgment debtor owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien on the interest of the defendant only.

Personal property of the judgment debtor shall be held only from the time it is actually levied upon. [1987 c 442 § 1103; 1987 c 202 § 116; 1983 1st ex.s. c 45 § 5; 1980 c 105 § 3; 1971 c 81 § 16; 1929 c 60 § 1; RRS § 445. Prior: 1893 c 42 § 9; Code 1881 § 321; 1869 p 78 § 317; 1860 p 51 § 234; 1857 p 11 § 15; 1854 p 175 § 240.]

Reviser's note: This section was amended by 1987 c 202 § 116 and by 1987 c 442 § 1103, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—1987 c 442 § 1104: "The amendment of RCW 4.56.190 by this act applies only to judgments entered after July 26, 1987." [1987 c 442 § 1104.]

Intent—1987 c 202: See note following RCW 2.04.190.

Application—1980 c 105: See note following RCW 4.16.020.

Repeal and saving—1929 c 60: "That chapter XXVIII (28), sections 320, 321, 322, and chapter XXIX (29), sections 323 and 324, and section 753 of the Code of Washington Territory of 1881; an act entitled 'An Act relating to the filing and recording of transcripts of judgments rendered in this state by the district or circuit courts of the United States', approved February 19, 1890, Laws of 1889/90, pages 97 to 98; section 5 of chapter XXXVIII (38) of the Laws of 1891, pages 77 to 78; chapter LXXXIV (84) of the Laws of 1891, pages 165 to 166; chapter XLII (42) of the Laws of 1893 pages 65 to 67, and chapter XXXIX (39) of the Laws of 1897, pages 52 to 53, chapter XI of the Laws of 1897, page 10, (sections 445, 446, 447, 450, 451, 452, 453, 454, 455, 456, 458, 459, 460, 461, 462 and 463 of Remington's Compiled Statutes; sections 8111, 8112, 8113, 8114, 8115, 8116, 8117, 8118, 8119, 8120, 8121, 8125, 8126, 8163, 8164 and 8165 of Pierce's Code) are hereby repealed: *Provided*, That such repeal shall not be construed as affecting any rights acquired or the validity of any act done or proceeding had or pending under the provisions of any of said acts repealed." [1929 c 60 § 9.]

Entry of judgments—Superior court—District court—Small claims: RCW 6.01.020.

Execution of judgments: RCW 6.17.020.

4.56.200 Commencement of lien on real estate. The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

(1) Judgments of the district court of the United States rendered in the county in which the real estate of the judgment debtor is situated, and judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry thereof;

(2) Judgments of the district court of the United States rendered in any county in this state other than that in which the real estate of the judgment debtor to be affected is situated, judgments of the supreme court of this state, judgments of the court of appeals of this state, and judgments of the superior court for any county other than that in which the real estate of the judgment debtor to be affected is situated, from the time of the filing of a duly certified abstract of such judgment with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, as provided in this act;

(3) Judgments of a district court of this state rendered in the county in which the real estate of the judgment debtor is situated, from the time of the filing of a duly certified transcript of the docket of the district court with the county clerk of the county in which such judgment was rendered, and upon such filing said judgment

shall become to all intents and purposes a judgment of the superior court for said county; and

(4) Judgments of a district court of this state rendered in any other county in this state than that in which the real estate of the judgment debtor to be affected is situated, a transcript of the docket of which has been filed with the county clerk of the county where such judgment was rendered, from the time of filing, with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, of a duly certified abstract of the record of said judgment in the office of the county clerk of the county in which the certified transcript of the docket of said judgment of said district court was originally filed. [1987 c 202 § 117; 1971 c 81 § 17; 1929 c 60 § 2; RRS § 445-1.]

Reviser's note: The words at the end of subsection (2) reading "as provided in this act" appeared in chapter 60, Laws of 1929 which is codified as RCW 4.56.090, 4.56.100, 4.56.190 through 4.56.210, 4.64.070, 4.64.090, 4.64.110 and 4.64.120.

Intent—1987 c 202: See note following RCW 2.04.190.

Entry of verdict in execution docket—Effect—Cessation of lien: RCW 4.64.020, 4.64.100.

4.56.210 Cessation of lien—Extension prohibited.

After the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor, and no suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than ten years from the date of the entry of the original judgment. [1979 ex.s. c 236 § 1; 1929 c 60 § 7; RRS §§ 459, 460. Formerly RCW 4.56.210 and 4.56.220. Prior: 1897 c 39 §§ 1, 2.]

Entry of judgments—Superior court—District court—Small claims: RCW 6.01.020.

4.56.250 Claims for noneconomic damages—Limitation. (1) As used in this section, the following terms have the meanings indicated unless the context clearly requires otherwise.

(a) "Economic damages" means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities.

(b) "Noneconomic damages" means subjective, non-monetary losses, including, but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship.

(c) "Bodily injury" means physical injury, sickness, or disease, including death.

(d) "Average annual wage" means the average annual wage in the state of Washington as determined under RCW 50.04.355.

(2) In no action seeking damages for personal injury or death may a claimant recover a judgment for noneconomic damages exceeding an amount determined by multiplying 0.43 by the average annual wage and by the life expectancy of the person incurring noneconomic damages, as the life expectancy is determined by the life expectancy tables adopted by the insurance commissioner. For purposes of determining the maximum amount allowable for noneconomic damages, a claimant's life expectancy shall not be less than fifteen years. The limitation contained in this subsection applies to all claims for noneconomic damages made by a claimant who incurred bodily injury. Claims for loss of consortium, loss of society and companionship, destruction of the parent-child relationship, and all other derivative claims asserted by persons who did not sustain bodily injury are to be included within the limitation on claims for noneconomic damages arising from the same bodily injury.

(3) If a case is tried to a jury, the jury shall not be informed of the limitation contained in subsection (2) of this section. [1986 c 305 § 301.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

4.56.260 Award of future economic damages—Proposal for periodic payments—Security—Satisfaction of judgment.

(1) In an action based on fault seeking damages for personal injury or property damage in which a verdict or award for future economic damages of at least one hundred thousand dollars is made, the court or arbitrator shall, at the request of a party, enter a judgment which provides for the periodic payment in whole or in part of the future economic damages. With respect to the judgment, the court or arbitrator shall make a specific finding as to the dollar amount of periodic payments intended to compensate the judgment creditor for the future economic damages.

(2) Prior to entry of judgment, the court shall request each party to submit a proposal for periodic payment of future economic damages to compensate the claimant. Proposals shall include provisions for: The name of the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, the number of payments or the period of time over which the payments shall be made, modification for hardship or unforeseen circumstances, posting of adequate security, and any other factor the court deems relevant under the circumstances. After each party has submitted a proposal, the court shall select the proposal, with any changes the court deems proper, which in the discretion of the court and the interests of justice best provides for the future needs of the claimant and enter judgment accordingly.

(3) If the court enters a judgment for periodic payments and any security required by the judgment is not posted within thirty days, the court shall enter a judgment for the payment of future damages in a lump sum.

(4) If at any time following entry of judgment for periodic payments, a judgment debtor fails for any reason to make a payment in a timely fashion according to

the terms of the judgment, the judgment creditor may petition the court for an order requiring payment by the judgment debtor of the outstanding payments in a lump sum. In calculating the amount of the lump sum judgment, the court shall total the remaining periodic payments due and owing to the judgment creditor converted to present value. The court may also require payment of interest on the outstanding judgment.

(5) Upon the death of the judgment creditor, the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages. Money damages awarded for loss of future earnings shall not be reduced or payments terminated by reason of the death of the judgment creditor.

(6) Upon satisfaction of a periodic payment judgment, any obligation of the judgment debtor to make further payments shall cease and any security posted pursuant to this section shall revert to the judgment debtor. [1986 c 305 § 801.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Chapter 4.60

JUDGMENT BY CONFESSION

Sections

4.60.010	Judgment on confession authorized.
4.60.020	Confession by public and private corporations and minors.
4.60.030	By persons jointly liable.
4.60.040	Confession, how made.
4.60.050	Judgment by confession without suit.
4.60.060	Statement in writing—Requisites.
4.60.070	Judgment on confession—Entry—Execution.

Damages, assessment without answer: RCW 4.28.290.

4.60.010 Judgment on confession authorized. On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint. [Code 1881 § 291; 1877 p 60 § 295; 1869 p 72 § 293; 1854 p 172 §§ 226–228; RRS § 413.]

4.60.020 Confession by public and private corporations and minors. When the action is against the state, a county or other public corporation therein, or a private corporation, or a minor, the confession shall be made by the person who at the time sustains the relation to such state, corporation, county or minor, as would authorize the service of a notice [summons] upon him; or in the case of a minor, if a guardian for the action has been appointed, then by such guardian; in all other cases the confession shall be made by the defendant in person. [Code 1881 § 292; 1877 p 60 § 296; 1869 p 72 § 294; RRS § 414.]

4.60.030 By persons jointly liable. When the action is upon a contract and against one or more defendants jointly liable, judgment may be given on the confession

of one or more defendants, against all the defendants thus jointly liable, whether such defendants have been served or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession. [Code 1881 § 293; 1877 p 60 § 297; 1869 p 72 § 295; RRS § 415.]

4.60.040 Confession, how made. The confession and assent thereto shall be in writing and subscribed by the parties making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds. [Code 1881 § 294; 1877 p 60 § 298; 1869 p 72 § 296; RRS § 416.]

4.60.050 Judgment by confession without suit. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. [Code 1881 § 295; 1877 p 60 § 299; 1869 p 73 § 297; RRS § 417.]

4.60.060 Statement in writing—Requisites. A statement in writing shall be made, signed by the defendant and verified by his oath, to the following effect:

(1) It shall authorize the entry of judgment for a specified sum.

(2) If it be for money due or to become due, it shall state concisely the facts out of which the indebtedness arose, and shall show that the sum confessed to be due, is justly due or to become due.

(3) If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same. [Code 1881 § 296; 1877 p 61 § 300; 1869 p 73 § 298; RRS § 418.]

4.60.070 Judgment on confession—Entry—Execution. The statement must be presented to the superior court or a judge thereof, and if the same be found sufficient, the court or judge shall indorse thereon an order that judgment be entered by the clerk; whereupon it may be filed in the office of the clerk, who shall enter a judgment for the amount confessed, with costs. Execution may be issued and enforced thereon in the same manner as upon judgments in other cases. [Code 1881 § 297; 1877 p 61 § 301; 1869 p 73 § 299; RRS § 419.]

Chapter 4.64

ENTRY OF JUDGMENTS

Sections

4.64.010	Time of entering judgment—Motions—Filing—Recording.
4.64.020	Entry of verdict in execution docket—Effect.
4.64.030	Entry of judgment in execution docket—Summary of judgment for payment of money.
4.64.060	Execution docket.
4.64.070	Clerk's record index to execution docket.
4.64.080	Entries in execution docket.
4.64.090	Abstract of judgment.
4.64.100	Abstract of verdict—Cessation of lien, certificate.
4.64.110	Transcript of district court docket.

4.64.120 Entry of abstract or transcript of judgment.

4.64.010 Time of entering judgment—Motions—Filing—Recording.

Reviser's note: RCW 4.64.010 was both amended and repealed during the 1984 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

4.64.020 Entry of verdict in execution docket—Effect. (1) The clerk on the return of a verdict shall forthwith enter it in the execution docket, specifying the amount, the names of the parties to the action, and the names of the party or parties against whom the verdict is rendered; such entry shall be indexed in the record index and shall conform as near as may be to entries of judgments required to be made in the execution docket.

(2) Beginning at eight o'clock a.m. the day after the entry of a verdict as herein provided, it shall be notice to all the world of the rendition thereof, and any person subsequently acquiring title to or a lien upon the real property of the party or parties against whom the verdict is returned shall be deemed to have acquired such title or lien with notice, and such title or lien shall be subject and inferior to any judgment afterwards entered on the verdict. [1987 c 442 § 1109; 1927 c 176 § 1; 1921 c 65 § 2; RRS § 431-1.]

Rules of court: Cf. CR 58(b).

4.64.030 Entry of judgment in execution docket—Summary of judgment for payment of money. The clerk shall enter all judgments in the execution docket, subject to the direction of the court and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action.

On the first page of each judgment which provides for the payment of money, the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment. If the attorney fees and costs are not included in the judgment, they shall be summarized in the cost bill when filed. This information is included in the judgment to assist the county clerk in his or her record-keeping function. [1987 c 442 § 1107; 1984 c 128 § 6; 1983 c 28 § 2; Code 1881 § 305; 1877 p 62 § 309; 1869 p 75 § 307; RRS § 435.]

Rules of court: Cf. CR 58(a), CR 58(b), CR 78 (e).

4.64.060 Execution docket. Every county clerk shall keep in the clerk's office a record, to be called the execution docket, which shall be a public record and open during the usual business hours to all persons desirous of inspecting it. [1987 c 442 § 1105; 1967 ex.s. c 34 § 1; Code 1881 § 307; 1877 p 62 § 311; 1869 p 75 § 309; 1854 p 173 § 234; RRS § 444.]

(1987 Ed.)

4.64.070 Clerk's record index to execution docket.

The clerk shall keep a proper record index to the execution docket, both direct and inverse, of all judgments, abstracts and transcripts of judgments in the clerk's office. The index shall refer to each party against whom the judgment is rendered or whose property is affected by it, and shall, together with the execution docket, be open to public inspection during regular office hours. [1987 c 442 § 1106; 1935 c 22 § 1, part; 1929 c 60 § 5, part; RRS § 446. Prior: 1893 c 42 § 6.]

Reviser's note: Part relating to assignment of judgment codified as RCW 4.56.090.

4.64.080 Entries in execution docket. When entering a judgment in the execution docket, the clerk shall leave space on the same page, if practicable, in which the clerk shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in the case until its final satisfaction, including when and to what county an execution is issued, when returned, and the return or the substance thereof. When the execution is levied on personal property which is returned unsold, the entry shall be: "levied (noting the date) on property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on any judgment the minutes of which are entered in the execution docket, the entry shall be: "levied upon real estate," noting the date. When any execution issued to any other county is returned levied upon real estate in such county, the entry in the docket shall be, "levied on real estate of -----, in ----- county," noting the date, county, and defendants whose estate is levied upon. When any money is paid, the amount and time when paid shall be entered. When a judgment is appealed, modified, discharged, or in any manner satisfied, the facts in respect thereto shall be entered. The parties interested may also assign or discharge such judgment on such execution docket. When the judgment is fully satisfied in any way, the clerk shall write the word "satisfied," in large letters across the face of the record of such judgment in the execution docket. [1987 c 442 § 1108; 1957 c 7 § 6; 1923 c 130 § 2; Code 1881 § 310; 1877 p 63 § 314; 1869 p 76 § 312; 1854 p 174 § 237; RRS § 448.]

4.64.090 Abstract of judgment. The abstract of a judgment shall contain (1) the name of the party, or parties, in whose favor the judgment was rendered; (2) the name of the party, or parties, against whom the judgment was rendered; (3) the date of the rendition of the judgment; (4) the amount for which the judgment was rendered, and in the following manner, viz: Principal \$-----; interest \$-----; costs \$-----; total \$----- [1987 c 442 § 1113; 1957 c 7 § 8. Prior: 1929 c 60 § 3, part; 1893 c 42 § 3; RRS § 451.]

4.64.100 Abstract of verdict—Cessation of lien, certificate. The clerk shall, on request and at the expense of the party in whose favor the verdict is rendered, or the party's attorney, prepare an abstract of such verdict

in substantially the same form as an abstract of a judgment and transmit such abstract to the clerk of any court in any county in the state as directed, and shall make a note on the execution docket of the name of the county to which each of such abstracts is sent. The clerk receiving such abstract shall, on payment of the statutory fee, enter and index it in the execution docket in the same manner as an abstract of judgment. The entry shall have the same effect in such county as in the county where the verdict was rendered.

Whenever the verdict, or any judgment rendered thereon, shall cease to be a lien in the county where rendered, the clerk of the court shall on request of anyone, and the payment of the cost and expense thereof, certify that the lien has ceased, and transmit such certificate to the clerk of any court to which an abstract was forwarded, and the clerk receiving the certificate, on payment of the statutory fee, shall enter it in the execution docket, and then the lien of such verdict or judgment shall cease. Nothing in this section or RCW 4.64.020 shall be construed as authorizing the issuance of an execution by a clerk in any other county than that in which the judgment is rendered. [1987 c 442 § 1110; 1984 c 76 § 5; 1921 c 65 § 3; RRS § 431-2.]

Fees of

superior court clerks: RCW 36.18.020.

supreme and appellate court clerks: RCW 2.32.070.

4.64.110 Transcript of district court docket. A transcript of the district court docket shall contain an exact copy of the district court judgment from the docket. [1987 c 202 § 118; 1957 c 7 § 9. Prior: 1929 c 60 § 3, part; 1893 c 42 § 4; RRS § 452.]

Intent—1987 c 202: See note following RCW 2.04.190.

4.64.120 Entry of abstract or transcript of judgment. It shall be the duty of the county clerk to enter in the execution docket any duly certified transcript of a judgment of a district court of this state and any duly certified abstract of any judgment of any court mentioned in RCW 4.56.200, filed in the county clerk's office, and to index the same in the same manner as judgments originally rendered in the superior court for the county of which he or she is clerk. [1987 c 442 § 1111; 1987 c 202 § 119; 1929 c 60 § 4; RRS § 453. Prior: 1893 c 42 § 5.]

Reviser's note: This section was amended by 1987 c 202 § 119 and by 1987 c 442 § 1111, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 4.68

PROCEDURE TO BIND JOINT DEBTOR

Sections

4.68.010	Summons after judgment.
4.68.020	Contents of summons.
4.68.030	Affidavit must accompany summons.
4.68.040	Defenses.

4.68.050	Pleadings.
4.68.060	Trial.

4.68.010 Summons after judgment. When a judgment is recorded against one or more of several persons jointly indebted upon an obligation by proceeding as provided by the court by rule, such defendants who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons. [1984 c 76 § 6; Code 1881 § 314; 1877 p 64 § 318; RRS § 436.]

4.68.020 Contents of summons. The summons, as provided in RCW 4.68.010, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner and returnable within the same time, as the original summons. It is not necessary to file a new complaint. [Code 1881 § 315; 1877 p 64 § 319; RRS § 437.]

4.68.030 Affidavit must accompany summons. The summons must be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon. [Code 1881 § 316; 1877 p 65 § 320; RRS § 438.]

4.68.040 Defenses. Upon the service of such summons and affidavit, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently to the taking of the judgment, or he may deny his liability on the obligation upon which the judgment was rendered, except a discharge from such liability by the statute of limitations. [Code 1881 § 317; 1877 p 65 § 321; RRS § 439.]

4.68.050 Pleadings. If the defendant in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was rendered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer constitute such written allegations. [Code 1881 § 318; 1877 p 65 § 322; RRS § 440.]

4.68.060 Trial. The issue formed may be tried as in other cases, but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must not exceed the amount remaining unsatisfied on such original judgment, with interest thereon. [Code 1881 § 319; 1877 p 65 § 323; RRS § 441.]

Chapter 4.72
VACATION AND MODIFICATION OF
JUDGMENTS

Sections	
4.72.010	Causes for enumerated.
4.72.020	Motion to vacate—Time limitation.
4.72.030	Petition to vacate for certain causes—Time limitation.
4.72.050	Conditions precedent to vacation.
4.72.060	Grounds for vacation may first be tried.
4.72.070	Injunction to suspend proceedings.
4.72.080	Construction of chapter—Time limitations when fraud, misrepresentation concerned.
4.72.090	Judgment upon denial of application.

4.72.010 Causes for enumerated. The superior court in which a judgment or final order has been rendered, or made, shall have power to vacate or modify such judgment or order:

(1) By granting a new trial for the cause, within the time and in the manner, and for any of the causes prescribed by the rules of court relating to new trials.

(2) By a new trial granted in proceedings against defendant served by publication only as prescribed in RCW 4.28.200.

(3) For mistakes, neglect or omission of the clerk, or irregularity in obtaining a judgment or order.

(4) For fraud practiced by the successful party in obtaining the judgment or order.

(5) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings.

(6) For the death of one of the parties before the judgment in the action.

(7) For unavoidable casualty, or misfortune preventing the party from prosecuting or defending.

(8) For error in a judgment shown by a minor, within twelve months after arriving at full age. [1957 c 9 § 4; Code 1881 § 436; 1877 p 96 § 438; 1875 p 20 § 1; RRS § 464.]

Rules of court: Cf. CR 52(d), CR 60(b).

Judgment to recover realty, vacation: RCW 7.28.260.

4.72.020 Motion to vacate—Time limitation. The proceedings to vacate or modify a judgment or order for mistakes or omissions of the clerk, or irregularity in obtaining the judgment or order, shall be by motion served on the adverse party or on his attorney in the action, and within one year. [1891 c 27 § 1; Code 1881 § 438; 1877 p 97 § 440; 1875 p 21 § 3; RRS § 466.]

Rules of court: Cf. CR 60(b).

4.72.030 Petition to vacate for certain causes—Time limitation. RCW 4.72.010(2), (3), (4), (5), (6), and (7) shall be by petition verified by affidavit, setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and if the party is a defendant, the facts constituting a defense to the action; and such proceedings must be commenced within one year after the judgment or order was made, unless

the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability. [1891 c 27 § 2; Code 1881 § 439; 1877 p 97 § 441; 1875 p 21 § 4; RRS § 467.]

Rules of court: Cf. CR 60(b).

4.72.050 Conditions precedent to vacation. The judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment is rendered; or, if the plaintiff seeks its vacation, that there is a valid cause of action; and when judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment. [Code 1881 § 441; 1877 p 97 § 443; 1875 p 22 § 6; RRS § 469.]

4.72.060 Grounds for vacation may first be tried. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defense or cause of action. [Code 1881 § 442; 1877 p 97 § 440; 1875 p 22 § 7; RRS § 470.]

4.72.070 Injunction to suspend proceedings. The party seeking to vacate or modify a judgment or order may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or the judge upon its being rendered probable, by affidavit or petition sworn to, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. [Code 1881 § 443; 1877 p 97 § 445; 1875 p 22 § 8; RRS § 471.]

Rules of court: Cf. CR 62.

4.72.080 Construction of chapter—Time limitations when fraud, misrepresentation concerned. The provisions of this chapter shall not be so construed as to affect the power of the court to vacate or modify judgments or orders as elsewhere in this code provided; nor shall the time limitations set forth in this chapter within which proceedings to vacate or modify a judgment must be started apply to a judgment heretofore or hereafter entered by consent or stipulation where the grounds to vacate or modify such judgment are based on fraud or misrepresentation, or when after the entry of the judgment either party fails to fulfill the terms and conditions on which the consent judgment or stipulation was entered; nor shall any judgment of acquittal in a criminal action be vacated under the provisions of this chapter. [1961 c 88 § 1; 1891 c 27 § 4; RRS § 472.]

Reviser's note: The words "this code" appeared in 1891 c 27 § 4.

4.72.090 Judgment upon denial of application. In all cases in which an application under this chapter to vacate or modify a judgment or order for the recovery of money is denied, if proceedings on the judgment or order shall have been suspended, judgment shall be rendered against the plaintiff [applicant] for the amount of the former judgment or order, interest and costs, together

with damages at the discretion of the court, not exceeding ten percent on the amount of the judgment or order. [1891 c 27 § 5; Code 1881 § 444; 1877 p 97 § 446; 1875 p 22 § 9; RRS § 473.]

Chapter 4.76 NEW TRIALS

Sections

4.76.010	New trial defined.
4.76.030	Increase or reduction of verdict as alternative to new trial.
4.76.070	Newly discovered evidence, requirements as to.
4.76.080	Petition for new trial when discovery of grounds delayed.

4.76.010 New trial defined. A new trial is a reexamination of an issue in the same court after a trial and decision by a jury, court or referees. [Code 1881 § 275; 1877 p 56 § 279; 1869 p 67 § 277; 1854 p 170 § 215; RRS § 398.]

4.76.030 Increase or reduction of verdict as alternative to new trial. If the trial court shall, upon a motion for new trial, find the damages awarded by a jury to be so excessive or inadequate as unmistakably to indicate that the amount thereof must have been the result of passion or prejudice, the trial court may order a new trial or may enter an order providing for a new trial unless the party adversely affected shall consent to a reduction or increase of such verdict, and if such party shall file such consent and the opposite party shall thereafter appeal from the judgment entered, the party who shall have filed such consent shall not be bound thereby, but upon such appeal the court of appeals or the supreme court shall, without the necessity of a formal cross-appeal, review de novo the action of the trial court in requiring such reduction or increase, and there shall be a presumption that the amount of damages awarded by the verdict of the jury was correct and such amount shall prevail, unless the court of appeals or the supreme court shall find from the record that the damages awarded in such verdict by the jury were so excessive or so inadequate as unmistakably to indicate that the amount of the verdict must have been the result of passion or prejudice. [1971 c 81 § 19; 1933 c 138 § 2; RRS § 399-1.]

Severability—1933 c 138: "Adjudication of invalidity of any of the sections of this act, or any part of any section, shall not impair or otherwise affect the validity of any other of said sections or remaining part of any section." [1933 c 138 § 3.] This applies to RCW 4.76.030.

4.76.070 Newly discovered evidence, requirements as to. If the motion be supported by affidavits and the cause be newly discovered evidence, the affidavits of any witness or witnesses, showing what their testimony will be, shall be produced or good reasons shown for their nonproduction. [1891 c 59 § 2; Code 1881 § 282; 1877 p 57 § 286; 1869 p 68 § 284; 1854 p 170 § 219; RRS § 403.]

4.76.080 Petition for new trial when discovery of grounds delayed. When the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after the time when the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases, not later than after the discovery, on which notice shall be served and returned, and the defendant held to appear as in an original action. The facts stated in the petition shall be considered as denied without answer. The case shall be tried as other cases by ordinary proceedings, but no motion shall be filed more than one year after the final judgment was rendered. [1955 c 44 § 1; Code 1881 § 437; 1875 p 21 § 2; RRS § 465.]

Chapter 4.80 EXCEPTIONS

Sections

4.80.010	Exception defined.
4.80.020	When to be taken.
4.80.030	Requisites—Entry in minutes.
4.80.040	Manner of taking and entry.
4.80.140	Application of chapter.

Rules of court: Cf. CR 46.

4.80.010 Exception defined. An exception is a claim of error in a ruling or decision of a court, judge or other tribunal, or officer exercising judicial functions, made in the course of an action or proceeding or after judgment therein. [1893 c 60 § 1; RRS § 381.]

Rules of court: Cf. CR 46.

Construction—1893 c 60: "This act shall govern proceedings had after it shall take effect, in actions then pending as well as those in actions thereafter begun; but it shall not affect any right acquired or proceeding had prior to the time when it shall take effect, nor restore any right or enlarge any time then already lost or expired. And except as above provided all acts and parts of acts inconsistent with the provisions of this act are hereby repealed." [1893 c 60 § 18.] This applies to RCW 4.80.010 through 4.80.140.

4.80.020 When to be taken. It shall not be necessary or proper to take or enter an exception to any ruling or decision mentioned in RCW 4.80.010, which is embodied in a written judgment, order or journal entry in the cause. But this section shall not apply to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner, or in a decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury. [1893 c 60 § 2; RRS § 382.]

Rules of court: Cf. CR 46.

4.80.030 Requisites—Entry in minutes. Exceptions to any ruling upon an objection to the admission of evidence, offered in the course of a trial or hearing, need not be formally taken, but the question put or other offer of evidence, together with the objection thereto and the ruling thereon, shall be entered by the court, judge, referee or commissioner (or by the stenographer, if one is in attendance) in the minutes of the trial or hearing, and such entry shall import an exception by the party

against whom the ruling was made. [1893 c 60 § 5; RRS § 385.]

Rules of court: Cf. CR 46.

4.80.040 Manner of taking and entry. Exceptions to any ruling or decision made in the course of a trial or hearing, or in the progress of a cause, except those to which it is provided in this chapter that no exception need be taken and those to which some other mode of exception is in this chapter prescribed, may be taken by any party by stating to the court, judge, referee or commissioner making the ruling or decision, when the same is made, that such party excepts to the same; whereupon such court, judge, referee or commissioner shall note the exception in the minutes of the trial, hearing or cause, or shall cause the stenographer (if one is in attendance) so to note the same. [1893 c 60 § 6; RRS § 386.]

Rules of court: Cf. CR 46.

4.80.140 Application of chapter. This chapter shall apply to and govern all civil actions and proceedings, both legal and equitable, and all criminal causes, in the superior courts, but shall not apply to district courts or other courts of limited jurisdiction from which an appeal does not lie directly to the supreme court or court of appeals. [1987 c 202 § 120; 1971 c 81 § 21; 1893 c 60 § 17; RRS § 397, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 4.84 COSTS

Sections

4.84.010	Compensation of attorneys—Costs defined.
4.84.020	Amount of contracted attorneys' fee to be fixed by court.
4.84.030	Prevailing party to recover costs.
4.84.040	Limitation on costs in certain actions.
4.84.050	Limited to one of several actions.
4.84.060	Costs to defendant.
4.84.070	Costs to defendants defending separately.
4.84.080	Schedule of attorneys' fees.
4.84.090	Cost bill—Witnesses to report attendance.
4.84.100	Costs on postponement of trial.
4.84.110	Costs where tender is made.
4.84.120	Costs where deposit in court is made and rejected.
4.84.130	Costs in appeals from district courts.
4.84.140	Costs against guardian of infant plaintiff.
4.84.150	Costs against fiduciaries.
4.84.160	Costs against assignee.
4.84.170	Costs against state or county.
4.84.185	Prevailing party to receive expenses for opposing frivolous action or defense.
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4.84.330	Actions on contract or lease which provides that attorney's fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorney's fees—Waiver prohibited.

Deposit of jury fee taxable as costs: RCW 4.44.110.

4.84.010 Compensation of attorneys—Costs defined. The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums by way of indemnity for the prevailing party's expenses in the action, which allowances are termed costs, including, in addition to costs otherwise authorized by law, the following expenses:

- (1) Filing fees;
- (2) Fees for the service of process;
- (3) Fees for service by publication;
- (4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;
- (5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;
- (6) Statutory attorney and witness fees; and
- (7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: *Provided*, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment. [1984 c 258 § 92; 1983 1st ex.s. c 45 § 7; Code 1881 § 505; 1877 p 108 § 509; 1869 p 123 § 459; 1854 p 201 § 367; RRS § 474.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.
Attorney fee in appeals from board of industrial insurance appeals: RCW 51.52.130, 51.52.132.

4.84.020 Amount of contracted attorneys' fee to be fixed by court. In all cases of foreclosure of mortgages and in all other cases in which attorneys' fees are allowed, the amount thereof shall be fixed by the court at such sum as the court shall deem reasonable, any stipulations in the note, mortgage or other instrument to the contrary notwithstanding; but in no case shall said fee be

fixed above contract price stated in said note or contract. [1895 c 48 § 1; 1891 c 44 § 1; 1888 p 9 § 1; 1885 p 176 § 1; RRS § 475.]

4.84.030 Prevailing party to recover costs. In any action in the superior court of Washington the prevailing party shall be entitled to his or her costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdiction of the district court when commenced in the superior court. [1987 c 202 § 121; 1890 p 337 § 1; 1883 p 42 § 1; Code 1881 §§ 506, 507; 1854 p 201 §§ 368, 369; RRS § 476.]

Intent—1987 c 202: See note following RCW 2.04.190.

4.84.040 Limitation on costs in certain actions. In an action for an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recover less than ten dollars, he shall be entitled to no more costs or disbursements than the damage recovered. [Code 1881 § 508; 1877 p 108 § 512; 1869 p 123 § 460; 1854 p 202 § 370; RRS § 477.]

4.84.050 Limited to one of several actions. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this state. [Code 1881 § 509; 1877 p 108 § 513; 1869 p 123 § 461; 1854 p 202 § 371; RRS § 478.]

4.84.060 Costs to defendant. In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his favor for the same. [Code 1881 § 510; 1877 p 109 § 514; 1869 p 123 § 462; 1854 p 202 § 372; RRS § 479.]

4.84.070 Costs to defendants defending separately. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such defendants as recover judgments in their favor, or either of them. [Code 1881 § 511; 1877 p 109 § 515; 1869 p 124 § 463; 1854 p 202 § 373; RRS § 480.]

4.84.080 Schedule of attorneys' fees. When allowed to either party, costs to be called the attorney fee, shall be as follows:

(1) In all actions where judgment is rendered, one hundred twenty-five dollars.

(2) In all actions where judgment is rendered in the supreme court or the court of appeals, after argument, one hundred twenty-five dollars. [1985 c 240 § 1; 1981 c 331 § 3; 1975-76 2nd ex.s. c 30 § 2; Code 1881 § 512;

1877 p 108 § 516; 1869 p 124 § 464; 1854 p 202 § 374; RRS § 481.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Costs: RCW 4.84.190, 4.88.260.

Transmission of record on change of venue—Costs, attorney's fees: RCW 4.12.090.

4.84.090 Cost bill—Witnesses to report attendance. The prevailing party, in addition to allowance for costs, as provided in RCW 4.84.080, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The court shall allow the prevailing party all service of process charges in case such process was served by a person or persons not an officer or officers. Such service charge shall be the same as is now allowed or shall in the future be allowed as fee and mileage to an officer. The disbursements shall be stated in detail and verified by affidavit, and shall be served on the opposite party or his attorney, and filed with the clerk of the court, within ten days after the judgment: *Provided*, The clerk of the court shall keep a record of all witnesses in attendance upon any civil action, for whom fees are to be claimed, with the number of days in attendance and their mileage, and no fees or mileage for any witness shall be taxed in the cost bill unless they shall have reported their attendance at the close of each day's session to the clerk in attendance at such trial. [1949 c 146 § 1; 1905 c 16 § 1; Code 1881 § 513; 1877 p 109 § 517; 1869 p 124 § 465; 1854 p 202 § 375; Rem. Supp. 1949 § 482.]

Witness fees and mileage: Chapter 2.40 RCW.

4.84.100 Costs on postponement of trial. When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement. [Code 1881 § 515; 1877 p 109 § 519; 1854 p 203 § 377; RRS § 484.]

4.84.110 Costs where tender is made. When in an action for the recovery of money, the defendant alleges in his answer, that, before the commencement of the action, he tendered to the plaintiff the full amount to which he is entitled, in such money as by agreement ought to be tendered, and thereupon brings into court, for the plaintiff, the amount tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant. [Code 1881 § 516; 1877 p 109 § 520; 1854 p 203 § 378; RRS § 485.]

4.84.120 Costs where deposit in court is made and rejected. If the defendant in any action pending, shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept

the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he shall pay all costs that may accrue from the time such money was so deposited. [Code 1881 § 517; 1877 p 110 § 521; 1854 p 203 § 379; RRS § 486.]

Conflicting claims, deposit in court, costs: RCW 4.08.170.

4.84.130 Costs in appeals from district courts. In all civil actions tried before the district court, in which an appeal shall be taken to the superior court, and the party appellant shall not recover a more favorable judgment in the superior court than before the district court, such appellant shall pay all costs. [1987 c 202 § 122; Code 1881 § 518; 1877 p 110 § 522; 1854 p 203 § 380; RRS § 487.]

Intent—1987 c 202: See note following RCW 2.04.190.
District court appeals: Chapter 12.36 RCW.

4.84.140 Costs against guardian of infant plaintiff. When costs are adjudged against an infant plaintiff, the guardian or person by whom he appeared in the action shall be responsible therefor, and payment may be enforced by execution. [Code 1881 § 519; 1877 p 110 § 523; 1854 p 203 § 381; RRS § 488.]

4.84.150 Costs against fiduciaries. In [an] action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting in his own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense. [Code 1881 § 520; 1877 p 110 § 524; 1854 p 203 § 382; RRS § 489.]

Actions by and against personal representatives, etc.: Chapter 11.48 RCW.

4.84.160 Costs against assignee. When the cause of action, after the commencement of the action, by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable for the costs in the same manner as if he were a party, and payment thereof may be enforced by execution. [Code 1881 § 521; 1877 p 110 § 525; 1869 p 125 § 473; 1854 p 203 § 383; RRS § 490.]

4.84.170 Costs against state or county. In all actions prosecuted in the name and for the use of the state, or in the name and for the use of any county, and in any action brought against the state or any county, and on all appeals to the supreme court or the court of appeals of the state in all actions brought by or against either the state or any county, the state or county shall be liable for costs in the same case and to the same extent as private parties. [1971 c 81 § 22; 1959 c 62 § 1; Code 1881 § 522; 1877 p 110 § 526; 1854 p 203 § 384; RRS § 491.]

4.84.185 Prevailing party to receive expenses for opposing frivolous action or defense. In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after an order of dismissal, order on summary judgment, or final judgment after trial or other final order terminating the action as to the prevailing party. In no event may such motion be filed more than thirty days after entry of the order. The judge shall consider the action, counterclaim, cross-claim, third party claim, or defense as a whole.

The provisions of this section apply unless otherwise specifically provided by statute. [1987 c 212 § 201; 1983 c 127 § 1.]

4.84.190 Costs in proceedings not specifically covered. In all actions and proceedings other than those mentioned in this chapter [and RCW 4.48.100], where no provision is made for the recovery of costs, they may be allowed or not, and if allowed may be apportioned between the parties, in the discretion of the court. [Code 1881 § 525; 1877 p 111 § 529; 1854 p 204 § 387; RRS § 493.]

Costs: RCW 4.84.080, 4.88.260.

4.84.200 Retaxation of costs. Any party aggrieved by the taxation of costs by the clerk of the court may, upon application, have the same retaxed by the court in which the action or proceeding is had. [Code 1881 § 526; 1877 p 111 § 530; 1854 p 204 § 388; RRS § 494.]

4.84.210 Security for costs. When a plaintiff in an action, or in a garnishment or other proceeding, resides out of the county, or is a foreign corporation, or begins such action or proceeding as the assignee of some other person or of a firm or corporation, as to all causes of action sued upon, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant or garnishee defendant. When required, all proceedings in the action or proceeding shall be stayed until a bond, executed by two or more persons, or by a surety company authorized to do business in this state be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action or proceeding, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court or judge, upon proof that the original bond is insufficient security, and proceedings in the action or proceeding stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond. [1929 c 103 § 1; Code 1881 § 527; 1877 p 111 § 531; 1854 p 204 § 389; RRS § 495.]

4.84.220 Bond in lieu of separate security. In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of two hundred dollars running to the state of Washington, with surety as in case of a separate bond, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action. [1929 c 103 § 2; RRS § 495-1.]

4.84.230 Dismissal for failure to give security. After the lapse of ninety days from the service of notice that security is required or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge may order the action to be dismissed. [1933 c 14 § 1; RRS § 495-2.]

4.84.240 Judgment on cost bond. Whenever any bond or undertaking for the payment of any costs to any party shall be filed in any action or other legal proceeding in any court in this state and judgment should be rendered for any such costs against the principal on any such bonds or against the party primarily liable therefor in whose behalf any such bond or undertaking has been filed, such judgment for costs shall be rendered against the principal on such bond or the party primarily liable therefor and at the same time also against his surety or sureties on any or all such bonds or undertakings filed in any such action or other legal proceeding. [1909 c 173 § 1; RRS § 496.]

4.84.250 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Allowed to prevailing party. Notwithstanding any other provisions of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars. [1984 c 258 § 88; 1980 c 94 § 1; 1973 c 84 § 1.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—1980 c 94: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1980." [1980 c 94 § 6.]

4.84.260 Attorneys' fees as costs in damage actions of ten thousand dollars or less—When plaintiff deemed prevailing party. The plaintiff, or party seeking relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250 when the recovery, exclusive of costs,

is as much as or more than the amount offered in settlement by the plaintiff, or party seeking relief, as set forth in RCW 4.84.280. [1973 c 84 § 2.]

4.84.270 Attorneys' fees as costs in damage actions of ten thousand dollars or less—When defendant deemed prevailing party. The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages where the amount pleaded, exclusive of costs, is equal to or less than the maximum allowed under RCW 4.84.250, recovers nothing, or if the recovery, exclusive of costs, is the same or less than the amount offered in settlement by the defendant, or the party resisting relief, as set forth in RCW 4.84.280. [1980 c 94 § 2; 1973 c 84 § 3.]

Effective date—1980 c 94: See note following RCW 4.84.250.

4.84.280 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Offers of settlement in determining. Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. Offers of settlement shall not be served until thirty days after the completion of the service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250. [1983 c 282 § 1; 1980 c 94 § 3; 1973 c 84 § 4.]

Effective date—1980 c 94: See note following RCW 4.84.250.

4.84.290 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Prevailing party on appeal. If the case is appealed, the prevailing party on appeal shall be considered the prevailing party for the purpose of applying the provisions of RCW 4.84.250: *Provided*, That if, on appeal, a retrial is ordered, the court ordering the retrial shall designate the prevailing party, if any, for the purpose of applying the provisions of RCW 4.84.250.

In addition, if the prevailing party on appeal would be entitled to attorneys' fees under the provisions of RCW 4.84.250, the court deciding the appeal shall allow to the prevailing party such additional amount as the court shall adjudge reasonable as attorneys' fees for the appeal. [1973 c 84 § 5.]

4.84.300 Attorneys' fees as costs in damage actions of ten thousand dollars or less—Application. The provisions of RCW 4.84.250 through 4.84.290 shall apply regardless of whether the action is commenced in district court or superior court except as provided in RCW 4.84.280. This section shall not be construed as conferring jurisdiction on either court. [1987 c 202 § 123; 1980 c 94 § 4; 1973 c 84 § 6.]

Intent—1987 c 202: See note following RCW 2.04.190.

Effective date—1980 c 94: See note following RCW 4.84.250.

4.84.320 Attorneys fees in actions for injuries resulting from the rendering of medical and other health care. See RCW 7.70.070.

4.84.330 Actions on contract or lease which provides that attorney's fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorney's fees—Waiver prohibited. In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements.

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorney's fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered. [1977 ex.s. c 203 § 1.]

**Chapter 4.88
APPEALS**

Sections

- 4.88.260 Costs on appeal.
- 4.88.330 Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals.

*Rule-making power of court of appeals: RCW 2.06.030, 2.06.040.
supreme court: RCW 2.04.180 through 2.04.210.*

4.88.260 Costs on appeal. A party who substantially prevails in an opinion of the supreme court or court of appeals shall, when the opinion becomes final, be allowed costs for expenses incurred by him, irrespective of costs taxed in the case in the court below, as follows: The fee of the clerk of the appellate court; the fee of the clerk of the superior court for preparing, certifying and transmitting to the appellate court the transcript on appeal, or any supplementary transcript, and the statement of facts, including all exhibits; attorney fees; the actual amount incurred in the printing of briefs required by the appellate rules, the actual amount incurred by the appellant, as stenographer's fees for preparing the statement of facts and one copy; and the actual cost of the premium on an appeal and/or supersedeas bond. When the judgment of the superior court is affirmed and remanded for trial, the awarding of costs shall abide the final determination of the cause. When the judgment is affirmed in part, reversed in part, modified or remanded for further proceedings, all or partial costs may be awarded to either party or it may be provided that costs shall abide the final result of the further proceedings. When an opinion is filed by the supreme court finally determining a cause reviewed by the court of appeals,

the supreme court shall allow costs for the above items incurred in both the supreme court and court of appeals. When an order is entered in a case, the court shall have discretion to allow costs for any or all of the items set forth above. When in the opinion of the court a brief, statement of facts, or transcript is improper in substance or unnecessarily long with regard to the issues raised on the appeal, the court, may in its discretion order the disallowance as costs of any part or the whole of the cost thereof. [1981 c 331 § 4; 1971 ex.s. c 107 § 3; 1941 c 86 § 1; 1893 c 61 § 29; Rem. Supp. 1941 § 1744.]

Rules of court: Cf. Title 14 RAP, RAP 18.22.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Attorneys' fees as costs in supreme court: RCW 4.84.080(4), (5).

Costs: RCW 4.84.190.

4.88.330 Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals. When a party has been judicially determined to have a constitutional right to obtain a review and to be unable by reason of poverty to procure counsel to perfect the review all costs necessarily incident to the proper consideration of the review including preparation of the record, reasonable fees for court appointed counsel to be determined by the supreme court, and actual travel expenses of counsel for appearance in the supreme court or court of appeals, shall be paid by the state. Upon satisfaction of requirements established by supreme court rules and submission of appropriate vouchers to the clerk of the supreme court, payment shall be made from funds specifically appropriated by the legislature for that purpose. [1975 1st ex.s. c 261 § 2. Prior: 1972 ex.s. c 111 § 2; 1970 ex.s. c 31 § 2; 1965 c 133 § 2. Formerly RCW 10.01.112.]

Severability—1965 c 133: See note following RCW 2.32.240.

Transcript of testimony—Fee—Forma pauperis: RCW 2.32.240.

**Chapter 4.92
ACTIONS AND CLAIMS AGAINST STATE**

Sections

- 4.92.005 "Volunteer"—Definition.
- 4.92.010 Where brought—Change of venue.
- 4.92.020 Service of summons and complaint.
- 4.92.030 Duties of attorney general—Procedure.
- 4.92.040 Judgments—Claims to legislature against state—
Payment procedure—Inapplicability to judgments and claims against housing finance commission.
- 4.92.045 Interest on judgments against state.
- 4.92.050 Limitations.
- 4.92.060 Actions against state officers, employees, or volunteers—Request for defense.
- 4.92.070 Actions against state officers, employees, or volunteers—Defense by attorney general—Expense of defense.
- 4.92.080 Bonds not required of state.
- 4.92.090 Tortious conduct of state—Liability for damages.
- 4.92.100 Tortious conduct of state—Claims—Presentment and filing—Contents.
- 4.92.110 Tortious conduct of state—Presentment and filing of claim prerequisite to suit.
- 4.92.120 Tortious conduct of state—Assignment of claims.

- 4.92.130 Tortious conduct of state—Tort claims revolving fund—Purpose.
- 4.92.140 Compromise and settlement of claims by head, governing body or designee of agency or department.
- 4.92.150 Compromise and settlement of claims by attorney general.
- 4.92.160 Payment of claims and judgments.
- 4.92.170 Payments charged to agencies and departments—Apportionments—Reimbursement of tort claims revolving fund—Reports—Insurance.
- 4.92.200 Actions against state on state warrant appearing to be redeemed—Claim required—Time limitation.

Actions against political subdivisions, municipal corporations and quasi municipal corporations: Chapter 4.96 RCW.

Claims, reports, etc., filing and receipt: RCW 1.12.070.

Hood Canal bridge, use for sport fishing purposes—Disclaimer of liability: RCW 47.56.366.

Liability coverage of university personnel and students: RCW 28B.20-.250 through 28B.20.255.

4.92.005 "Volunteer"—Definition. For the purposes of RCW 4.92.060, 4.92.070, 4.92.130, 4.92.140, and 4.92.150, volunteer is defined in RCW 51.12.035. [1985 c 217 § 6.]

4.92.010 Where brought—Change of venue. Any person or corporation having any claim against the state of Washington shall have a right of action against the state in the superior court.

The venue for such actions shall be as follows:

- (1) The county of the residence or principal place of business of one or more of the plaintiffs;
- (2) The county where the cause of action arose;
- (3) The county in which the real property that is the subject of the action is situated;
- (4) The county where the action may be properly commenced by reason of the joinder of an additional defendant; or
- (5) Thurston county.

Actions shall be subject to change of venue in accordance with statute, rules of court, and the common law as the same now exist or may hereafter be amended, adopted, or altered.

Actions shall be tried in the county in which they have been commenced in the absence of a seasonable motion by or in behalf of the state to change the venue of the action. [1986 c 126 § 1; 1973 c 44 § 1; 1963 c 159 § 1; 1927 c 216 § 1; 1895 c 95 § 1; RRS § 886.]

Severability—1963 c 159: "If any provision of this act, or its application to any persons or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 159 § 12.] This applies to RCW 4.92.010, 4.92.040, and 4.92.090 through 4.92.170.

Venue: Chapter 4.12 RCW.

4.92.020 Service of summons and complaint. Service of summons and complaint in such actions shall be served in the manner prescribed by law upon the attorney general, or by leaving the summons and complaint in the office of the attorney general with an assistant attorney general. [1986 c 126 § 2; 1927 c 216 § 2; 1895 c 95 § 2; RRS § 887.]

4.92.030 Duties of attorney general—Procedure. The attorney general or an assistant attorney general

shall appear and act as counsel for the state. The action shall proceed in all respects as other actions. Appeals may be taken to the supreme court or court of appeals of the state as in other actions or proceedings, but in case an appeal shall be taken on behalf of the state, no bond shall be required of the appellant. [1986 c 126 § 3; 1971 c 81 § 24; 1895 c 95 § 3; RRS § 888.]

4.92.040 Judgments—Claims to legislature against state—Payment procedure—Inapplicability to judgments and claims against housing finance commission.

(1) No execution shall issue against the state on any judgment.

(2) Whenever a final judgment against the state is obtained in an action on a claim arising out of tortious conduct, the claim shall be paid from the tort claims revolving fund.

(3) Whenever a final judgment against the state shall have been obtained in any other action, the clerk of the court shall make and furnish to the risk management office a duly certified copy of such judgment; the risk management office shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid from appropriations specifically provided for such purposes by law.

(4) Final judgments for which there are no provisions in state law for payment shall be transmitted by the risk management office to the senate and house of representatives committees on ways and means as follows:

(a) On the first day of each session of the legislature, the risk management office shall transmit judgments received and audited since the adjournment of the previous session of the legislature.

(b) During each session of legislature, the risk management office shall transmit judgments immediately upon completion of audit.

(5) All claims, other than judgments, made to the legislature against the state of Washington for money or property, shall be accompanied by a statement of the facts on which such claim is based and such evidence as the claimant intends to offer in support of the claim and shall be filed with the risk management office, which shall retain the same as a record. All claims of two thousand dollars or less shall be approved or rejected by the risk management office, and if approved shall be paid from appropriations specifically provided for such purpose by law. Such decision, if adverse to the claimant in whole or part, shall not preclude the claimant from seeking relief from the legislature. If the claimant accepts any part of his or her claim which is approved for payment by the risk management office, such acceptance shall constitute a waiver and release of the state from any further claims relating to the damage or injury asserted in the claim so accepted. The risk management office shall submit to the house and senate committees on ways and means, at the beginning of each regular session, a comprehensive list of all claims paid pursuant to this subsection during the preceding year. For all claims not approved by the risk management office, the risk management office shall recommend to the legislature whether such claims should be approved or rejected.

Recommendations shall be submitted to the senate and house of representatives committees on ways and means not later than the thirtieth day of each regular session of the legislature. Claims which cannot be processed for timely submission of recommendations shall be held for submission during the following regular session of the legislature. The recommendations shall include, but not be limited to:

(a) A summary of the facts alleged in the claim, and a statement as to whether these facts can be verified by the risk management office;

(b) An estimate by the risk management office of the value of the loss or damage which was alleged to have occurred;

(c) An analysis of the legal liability, if any, of the state for the alleged loss or damage; and

(d) A summary of equitable or public policy arguments which might be helpful in resolving the claim.

(5) The legislative committees to whom such claims are referred shall make a transcript, recording, or statement of the substance of the evidence given in support of such a claim. If the legislature approves a claim the same shall be paid from appropriations specifically provided for such purpose by law.

(6) Subsections (3) through (5) of this section do not apply to judgments or claims against the state housing finance commission created under chapter 43.180 RCW. [1986 c 126 § 4; 1983 c 161 § 28; 1979 ex.s. c 167 § 1; 1979 c 151 § 2; 1977 ex.s. c 144 § 1; 1963 c 159 § 6; 1895 c 95 § 4; RRS § 889.]

Severability—Effective dates—1983 c 161: See RCW 43.180-.903 and 43.180.904.

4.92.045 Interest on judgments against state. See RCW 4.56.115.

4.92.050 Limitations. All provisions of law relating to the limitations of personal actions shall apply to claims against the state, but the computation of time thereunder shall not begin until RCW 4.92.010 through 4.92.050 shall have become a law. [1895 c 95 § 5; RRS § 890.]

4.92.060 Actions against state officers, employees, or volunteers—Request for defense. Whenever an action or proceeding for damages shall be instituted against any state officer, including state elected officials, employee, or volunteer, arising from acts or omissions while performing, or in good faith purporting to perform, official duties, such officer, employee, or volunteer may request the attorney general to authorize the defense of said action or proceeding at the expense of the state. [1986 c 126 § 5; 1985 c 217 § 1; 1975 1st ex.s. c 126 § 1; 1975 c 40 § 1; 1921 c 79 § 1; RRS § 890-1.]

4.92.070 Actions against state officers, employees, or volunteers—Defense by attorney general—Expense of defense. If the attorney general shall find that said officer, employee, or volunteer's acts or omissions were, or purported to be in good faith, within the scope of that person's official duties, said request shall be granted, in

which event the necessary expenses of the defense of said action or proceeding shall be paid from the appropriations made for the support of the department to which such officer, employee, or volunteer is attached. In such cases the attorney general shall appear and defend such officer, employee, or volunteer, who shall assist and cooperate in the defense of such suit. [1986 c 126 § 6; 1985 c 217 § 2; 1975 1st ex.s. c 126 § 2; 1975 c 40 § 2; 1921 c 79 § 2; RRS § 890-2.]

4.92.080 Bonds not required of state. No bond shall be required of the state of Washington for any purpose in any case in any of the courts of the state of Washington and the state of Washington shall be, on proper showing, entitled to any orders, injunctions and writs of whatever nature without bond notwithstanding the provisions of any existing statute requiring that bonds be furnished by private parties. [1935 c 122 § 1; RRS § 390-3.]

4.92.090 Tortious conduct of state—Liability for damages. The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation. [1963 c 159 § 2; 1961 c 136 § 1.]

4.92.100 Tortious conduct of state—Claims—Presentment and filing—Contents. All claims against the state for damages arising out of tortious conduct shall be presented to and filed with the risk management office. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim or if the claimant is a minor, or is a nonresident of the state, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

With respect to the content of such claims this section shall be liberally construed so that substantial compliance will be deemed satisfactory. [1986 c 126 § 7; 1979 c 151 § 3; 1977 ex.s. c 144 § 2; 1967 c 164 § 2; 1963 c 159 § 3.]

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Puget Sound ferry and toll bridge system, claims against: RCW 47.60.250.

4.92.110 Tortious conduct of state—Presentment and filing of claim prerequisite to suit. No action shall be commenced against the state for damages arising out of tortious conduct until a claim has first been presented to

and filed with the risk management office. The requirements of this section shall not affect the applicable period of limitations within which an action must be commenced, but such period shall begin and shall continue to run as if no claim were required. [1986 c 126 § 8; 1979 c 151 § 4; 1977 ex.s. c 144 § 3; 1963 c 159 § 4.]

4.92.120 Tortious conduct of state—Assignment of claims. Claims against the state arising out of tortious conduct may be assigned voluntarily, involuntarily, and by operation of law to the same extent as like claims against private persons may be so assigned. [1963 c 159 § 5.]

4.92.130 Tortious conduct of state—Tort claims revolving fund—Purpose. A tort claims revolving fund in the custody of the treasurer is hereby created to be used solely and exclusively for the payment of claims against the state arising out of tortious conduct and against its officers, employees, and volunteers for whom the defense of the claim was authorized under RCW 4.92.070. No money shall be paid from the tort claims revolving fund unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted and unless:

(1) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

(2) The claim has been approved for payment in accordance with RCW 4.92.140 as herein or hereafter amended. [1985 c 217 § 3; 1975 1st ex.s. c 126 § 3; 1969 c 140 § 1; 1963 c 159 § 7.]

Severability—1969 c 140: "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." [1969 c 140 § 5.] This applies to RCW 4.92.130, 4.92.131, 4.92.160 and 4.92.170.

Actions against regents, trustees, etc., of institutions of higher education or educational boards, payments of obligations from fund: RCW 28B.10.842.

4.92.140 Compromise and settlement of claims by head, governing body or designee of agency or department. The head or governing body of any agency or department of state government or the designee of any such agency, with the approval of the attorney general and the risk management office, may consider, ascertain, adjust, determine, compromise, and settle any claim arising out of tortious conduct or under and pursuant to 42 U.S.C. Sec. 1981 et seq. for which the state of Washington or any of its officers, employees, or volunteers would be liable in law for money damages of ten thousand dollars or less. The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant; and upon the state of Washington, unless procured by fraud, and shall constitute a complete release of any claim against the state of Washington or its affected officer, employee, or volunteer. A request for administrative settlement shall not preclude a claimant from filing a court action pending administrative determination, limit the amount recoverable in such a suit, or constitute an admission against

interest of either the claimant or the state. [1985 c 217 § 4; 1985 c 188 § 8; 1979 ex.s. c 144 § 1; 1975 1st ex.s. c 126 § 4; 1963 c 159 § 8.]

Reviser's note: This section was amended by 1985 c 188 § 8 and by 1985 c 217 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

4.92.150 Compromise and settlement of claims by attorney general. After commencement of an action in a court of competent jurisdiction upon a claim against the state, or any of its officers, employees, or volunteers arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq., or upon petition by the state, the attorney general, with the prior approval of the risk management office and with the approval of the court, following such testimony as the court may require, may compromise and settle the same and stipulate for judgment against the state, the affected officer, employee, or volunteer. [1985 c 217 § 5; 1985 c 188 § 9; 1979 ex.s. c 144 § 2; 1975 1st ex.s. c 126 § 5; 1963 c 159 § 9.]

Reviser's note: This section was amended by 1985 c 188 § 9 and by 1985 c 217 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

4.92.160 Payment of claims and judgments. Payment of claims and judgments arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq. shall not be made by any agency or department of state government with the exception of the risk management office, and that office shall authorize and direct the payment of moneys only from the tort claims revolving fund whenever:

(1) The head or governing body of any agency or department of state or the designee of any such agency certifies to the risk management office that a claim has been settled under authority of RCW 4.92.140 as herein or hereafter amended; or

(2) The clerk of court has made and forwarded a certified copy of a final judgment in a court of competent jurisdiction and the attorney general certifies that the judgment is final and was entered in an action on a claim arising out of tortious conduct or under and pursuant to 42 U.S.C. Sec. 1981 et seq. Payment of a judgment shall be made to the clerk of the court for the benefit of the judgment creditors. Upon receipt of payment, the clerk shall satisfy the judgment against the state. [1986 c 126 § 9; 1979 ex.s. c 144 § 3; 1979 c 151 § 5; 1975 1st ex.s. c 126 § 6; 1969 c 140 § 2; 1963 c 159 § 10.]

Severability—1969 c 140: See note following RCW 4.92.130.
Duty of clerk to forward copy of judgment: RCW 4.92.040.

4.92.170 Payments charged to agencies and departments—Apportionments—Reimbursement of tort claims revolving fund—Reports—Insurance. Liability for and payment of claims arising out of tortious conduct or under and pursuant to 42 U.S.C. Sec. 1981 et seq. is declared to be a proper charge as part of the

normal cost of operating the various agencies and departments of state government whose operations and activities give rise to the liability and a lawful charge against moneys appropriated or available to such agencies and departments.

Within any agency or department the charge shall be apportioned among such appropriated and other available moneys in the same proportion that the moneys finance the activity causing liability. Whenever the operations and activities of more than one agency or department combine to give rise to a single liability, the risk management office shall determine the comparative responsibility of each agency or department for the liability.

State agencies shall make reimbursement to the tort claims revolving fund for any payment made from it for the benefit of such agencies. The director of financial management is authorized and directed to transfer or order the transfer to the tort claims revolving fund, from moneys available or appropriated to such agencies, that sum of money which is a proper charge against them. Such amounts may be expended for the purposes for which the tort claims revolving fund was created by RCW 4.92.130 without further or additional appropriation. In any case where reimbursement would seriously disrupt or prevent substantial performance of the operations or activities of the state agency, the director of financial management may relieve the agency of all or a portion of the obligation to make reimbursement.

The risk management office shall report on request to the legislature on the status of the tort claims revolving fund, all payments made therefrom, all reimbursements made thereto, and the identity of agencies and departments of state government whose operations and activities give rise to liability.

The risk management office may authorize agencies, in accordance with chapter 41.05 RCW to the extent that it is applicable, to purchase insurance to protect and hold personally harmless any officer or employee of the state, or any classes of such officers or employees or for other persons performing services for the state, whether by contract or otherwise, from any action, claim, or proceeding for damages arising out of the performance of duties for, employment with, or the performance of services on behalf of the state and to hold the officer or employee harmless from any expenses connected with the defense, settlement, or monetary judgment from such actions.

The risk management office shall adopt rules governing the procedures to be followed in making payment from the tort claims revolving fund. The office of financial management shall adopt rules governing the procedures to be followed in reimbursing the tort claims revolving fund and in relieving an agency of its obligation to reimburse the tort claims revolving fund. [1986 c 126 § 10; 1979 c 151 § 6; 1977 ex.s. c 228 § 2; 1977 c 75 § 3; 1975 1st ex.s. c 126 § 7; 1969 c 140 § 3; 1963 c 159 § 11.]

Severability—1969 c 140: See note following RCW 4.92.130.

4.92.200 Actions against state on state warrant appearing to be redeemed—Claim required—Time limitation. No action shall be commenced against the state on account of any state warrant appearing to have been redeemed unless a claim has been presented and filed with the state treasurer within six years of the date of issuance of such warrant. The requirements of this section shall not extend or modify the period of limitations otherwise applicable within which an action must be commenced, but such period shall begin and shall continue to run as if no claim were required. [1975 c 48 § 1.]

State warrants: RCW 43.08.061 through 43.08.080.

Chapter 4.96

ACTIONS AGAINST POLITICAL SUBDIVISIONS, MUNICIPAL CORPORATIONS AND QUASI MUNICIPAL CORPORATIONS

Sections	
4.96.010	Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations—Liability for damages.
4.96.020	Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations—Claims—Presentment and filing—Contents.
4.96.030	Interest on judgments against political subdivisions, municipal corporations or quasi municipal corporations.

Claims, reports, etc., filing and receipt: RCW 1.12.070.

Liability of public officials and governing body members: RCW 4.24.470.

4.96.010 Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations—Liability for damages. All political subdivisions, municipal corporations, and quasi municipal corporations of the state, 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 officers, agents or employees to the same extent as if they were a private person or corporation: *Provided*, That the filing within the time allowed by law of any claim required shall be a condition precedent to the maintaining of any action. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory. [1967 c 164 § 1.]

Purpose—1967 c 164: "It is the purpose of this act to extend the doctrine established in chapter 136, Laws of 1961, as amended, to all political subdivisions, municipal corporations and quasi municipal corporations of the state." [1967 c 164 § 17.]

Severability—1967 c 164: "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." [1967 c 164 § 18.]

The above two annotations apply to 1967 c 164. For codification of that act, see Codification Tables, Volume 0.

4.96.020 Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations—Claims—Presentment and filing—Contents. (1) Chapter 35.31 RCW shall apply to claims

against cities and towns, and chapter 36.45 RCW shall apply to claims against counties.

(2) The provisions of this subsection shall not apply to claims against cities and towns or counties but shall apply to claims against all other political subdivisions, municipal corporations, and quasi municipal corporations. Claims against such entities for damages arising out of tortious conduct shall be presented to and filed with the governing body thereof within one hundred twenty days from the date that the claim arose. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing his claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which his claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing him. No action shall be commenced against any such entity for damages arising out of tortious conduct until a claim has first been presented to and filed with the governing body thereof. The requirements of this subsection shall not affect the applicable period of limitations within which an action must be commenced, but such period shall begin and shall continue to run as if no claim were required. [1967 c 164 § 4.]

4.96.030 Interest on judgments against political subdivisions, municipal corporations or quasi municipal corporations. See RCW 4.56.115.

Title 5

EVIDENCE

Chapters

- 5.24 Uniform judicial notice of foreign laws act.
- 5.28 Oaths and affirmations.
- 5.40 Proof—General provisions.
- 5.44 Proof—Public documents.
- 5.45 Uniform business records as evidence act.
- 5.46 Uniform photographic copies of business and public records as evidence act.
- 5.48 Proof—Replacement of lost records.
- 5.52 Telegraphic communications.
- 5.56 Witnesses—Compelling attendance.
- 5.60 Witnesses—Competency.
- 5.62 Witnesses—Registered nurses.
- 5.64 Admissibility—Furnishing, offering or promising to pay medical expenses.

Rules of court: See Rules of Evidence (ER).

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Corporate seals, effect of absence from instrument: RCW 64.04.105.

Deposition, definitions: RCW 9A.72.010.

District courts, witnesses and depositions: Chapter 12.16 RCW.

Domestic relations, spouse as witness: RCW 26.20.071, 26.21.170.

Microfilming of records to provide continuity of civil government: Chapter 40.10 RCW.

Order for examination of judgment debtor: RCW 6.32.010.

Photographic or photomechanical recording of instruments: RCW 65-.04.030, 65.04.040.

Records of medical, dental, pharmaceutical or hospital review boards, immunity from process: RCW 4.24.250.

Superior court records, destruction, reproduction: RCW 36.23.065 through 36.23.070.

5.24.020 Manner of obtaining information. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information. [1941 c 82 § 2; Rem. Supp. 1941 § 1279.]

5.24.030 Determination by court—Review. The determination of such laws shall be made by the court and not by the jury and shall be reviewable. [1941 c 82 § 3; Rem. Supp. 1941 § 1280.]

5.24.040 Necessity of pleading foreign laws. This chapter shall not be construed to relieve any party of the duty of hereafter pleading such laws where required under the law and practice of this state. [1981 c 331 § 14; 1941 c 82 § 4; Rem. Supp. 1941 § 1281.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

5.24.050 Jurisdictions excepted. The law of any jurisdiction other than a state, territory or other jurisdiction of the United States shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice. [1941 c 82 § 5; Rem. Supp. 1941 § 1282.]

5.24.060 Construction of chapter. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1941 c 82 § 6; Rem. Supp. 1941 § 1283.]

5.24.070 Short title. This chapter may be cited as the "Uniform Judicial Notice of Foreign Laws Act." [1941 c 82 § 7; Rem. Supp. 1941 § 1284.]

Chapter 5.24

UNIFORM JUDICIAL NOTICE OF FOREIGN LAWS ACT

Sections

- 5.24.010 Judicial notice of Constitution and laws.
- 5.24.020 Manner of obtaining information.
- 5.24.030 Determination by court—Review.
- 5.24.040 Necessity of pleading foreign laws.
- 5.24.050 Jurisdictions excepted.
- 5.24.060 Construction of chapter.
- 5.24.070 Short title.

Rules of court: Cf. CR 9(k).

City or town ordinances, evidence: RCW 5.44.080.

Foreign statutes as evidence: RCW 5.44.050.

Uniform enforcement of foreign judgments act: Chapter 6.36 RCW.

5.24.010 Judicial notice of Constitution and laws. Every court of this state shall take judicial notice of the Constitution, common law, civil law, and statutes of every state, territory and other jurisdiction of the United States. [1941 c 82 § 1; Rem. Supp. 1941 § 1278.]

Chapter 5.28

OATHS AND AFFIRMATIONS

Sections

- 5.28.010 Who may administer.
- 5.28.020 How administered.
- 5.28.030 Form may be varied.
- 5.28.040 Form may be adapted to religious belief.
- 5.28.050 Form of affirmation.
- 5.28.060 Affirmation equivalent to oath.

Rules of court: Cf. ER 603; CR 43(d).

Oaths and mode of administering: State Constitution Art. 1 § 6.

5.28.010 Who may administer. That every court, judge, clerk of a court, or notary public, is authorized to take testimony in any action, suit or proceeding, and such other persons in particular cases as authorized by

law. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other person in such particular case as authorized. [1987 c 202 § 124; 2 H. C. § 1693; 1869 p 378 § 1; RRS § 1264.]

Intent—1987 c 202: See note following RCW 2.04.190.

Oath of witness in superior court to be administered by judge: Rules of court: Cf. CR 43(d).

Powers of courts, judicial officers to administer oaths: RCW 2.28.010, 2.28.060.

5.28.020 How administered. An oath may be administered as follows: The person who swears holds up his hand, while the person administering the oath thus addresses him: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between ----- and ----- shall be the truth, the whole truth, and nothing but the truth, so help you God." If the oath be administered to any other than a witness giving testimony, the form may be changed to: "You do solemnly swear you will true answers make to such questions as you may be asked," etc. [2 H. C. § 1694; 1869 p 378 § 2; RRS § 1265.]

5.28.030 Form may be varied. Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witness' opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode. [2 H. C. § 1695; 1869 p 379 § 3; RRS § 1266.]

5.28.040 Form may be adapted to religious belief. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such. [2 H. C. § 1696; 1869 p 379 § 4; RRS § 1267.]

5.28.050 Form of affirmation. Any person who has conscientious scruples against taking an oath, may make his solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," etc., as in RCW 5.28.020. [2 H. C. § 1697; 1869 p 379 § 5; RRS § 1268.]

5.28.060 Affirmation equivalent to oath. Whenever an oath is required, an affirmation, as prescribed in RCW 5.28.050 is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury, equally with a false oath. [2 H. C. § 1698; 1869 p 379 § 6; RRS § 1269.]

Perjury: Chapter 9A.72 RCW.

Chapter 5.40

PROOF—GENERAL PROVISIONS

Sections	
5.40.010	Pleadings do not constitute proof.
5.40.020	Written finding of presumed death as prima facie evidence.

5.40.030	Proof of missing in action, capture by enemy, etc.
5.40.040	Proof of authenticity of signature to report or of certification.
5.40.050	Breach of duty—Evidence of negligence—Negligence per se.
5.40.060	Defense to personal injury or wrongful death action—Intoxicating liquor or any drug.

Public documents, records and publications: Title 40 RCW.

Stolen property as evidence: RCW 9.54.130.

Tampering with physical evidence: RCW 9A.72.150.

5.40.010 Pleadings do not constitute proof. Pleadings sworn to by either party in any case shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party. [Code 1881 § 741; 1877 p 151 § 746; 1854 p 219 § 484; RRS § 283.]

5.40.020 Written finding of presumed death as prima facie evidence. A written finding of presumed death, made by the Secretary of War, the Secretary of the Navy, or other officer or employee of the United States authorized to make such finding, pursuant to the federal missing persons act (56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this state as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance. [1945 c 101 § 1; Rem. Supp. 1945 § 1257-1.]

Severability—1945 c 101: "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 101 § 4.] This applies to RCW 5.40.020 through 5.40.040.

5.40.030 Proof of missing in action, capture by enemy, etc. An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in RCW 5.40.020 or by any other law of the United States to make same, shall be received in any court, office or other place in this state as prima facie evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, as the case may be. [1945 c 101 § 2; Rem. Supp. 1945 § 1257-2.]

5.40.040 Proof of authenticity of signature to report or of certification. For the purposes of RCW 5.40.020 and 5.40.030 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been

certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify. [1945 c 101 § 3; Rem. Supp. 1945 § 1257–3.]

5.40.050 Breach of duty—Evidence of negligence—Negligence per se. A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; however, any breach of duty as provided by statute, ordinance, or administrative rule relating to electrical fire safety, the use of smoke alarms, or driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se. [1986 c 305 § 901.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

5.40.060 Defense to personal injury or wrongful death action—Intoxicating liquor or any drug. It is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault. The standard for determining whether a person was under the influence of intoxicating liquor or drugs shall be the same standard established for criminal convictions under RCW 46.61.502, and evidence that a person was under the influence of intoxicating liquor or drugs under the standard established by RCW 46.61.502 shall be conclusive proof that such person was under the influence of intoxicating liquor or drugs. [1987 c 212 § 1001; 1986 c 305 § 902.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Chapter 5.44

PROOF—PUBLIC DOCUMENTS

Sections

5.44.010	Court records, admissible when.
5.44.020	Foreign judgments for debt—Faith to be accorded.
5.44.030	Defenses available in suit on foreign judgment.
5.44.040	Certified copies of public records as evidence.
5.44.050	Foreign statutes as evidence.
5.44.060	Certified copies of recorded instruments as evidence.
5.44.070	Certified copies of instruments, or transcripts of county commissioners' proceedings.
5.44.080	City or town ordinances as evidence.
5.44.090	Copy of instrument restoring civil rights as evidence.
5.44.130	Seal, how affixed.

Rules of court: Cf. ER 803; ER 901; ER 902; ER 1005; CR 44.

5.44.010 Court records, admissible when. The records and proceedings of any court of the United States, or any state or territory, shall be admissible in evidence in all cases in this state when duly authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal

of such court annexed. [Code 1881 § 430; 1877 p 94 § 432; 1869 p 115 § 426; 1854 p 195 § 334; RRS § 1254.]

Rules of court: Cf. CR 44(a)(1).

5.44.020 Foreign judgments for debt—Faith to be accorded. Judgment for debt rendered in any other state or any territory against any person or persons residents of this state at the time of the rendition of such judgment, shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is rendered, unless such judgment shall be rendered upon personal service of summons, notice or other due process against the defendant therein. [1891 c 31 § 1; Code 1881 § 739; 1877 p 150 § 744; 1869 p 171 § 681; 1866 p 88 § 1; RRS § 1255.]

Rules of court: Cf. CR 44(a)(2).

Uniform enforcement of foreign judgments act: Chapter 6.36 RCW.

5.44.030 Defenses available in suit on foreign judgment. The same defense to suits on judgments rendered without such personal service may be made by the judgment debtor, which might have been set up in the original proceeding. [Code 1881 § 740; 1877 p 150 § 745; 1869 p 171 § 682; 1866 p 88 § 2; RRS § 1256.]

5.44.040 Certified copies of public records as evidence. Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state. [1891 c 19 § 16; Code 1881 § 432; 1854 p 195 § 336; RRS § 1257.]

Rules of court: Cf. ER 803; CR 44(a)(1).

5.44.050 Foreign statutes as evidence. Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this state, and on all other occasions as presumptive evidence of such laws. [Code 1881 § 435; 1877 p 95 § 437; 1869 p 116 § 431; 1854 p 196 § 339; RRS § 1259.]

Uniform judicial notice of foreign laws act: Chapter 5.24 RCW.

5.44.060 Certified copies of recorded instruments as evidence. Whenever any deed, conveyance, bond, mortgage or other writing, shall have been recorded or filed in pursuance of law, copies of record of such deed, conveyance, bond or other writing, duly certified by the officer having the lawful custody thereof, with the seal of the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes as the originals themselves. [Code 1881 § 431; 1877 p 95 § 433; 1869 p 115 § 427; 1854 p 195 § 335; RRS § 1260.]

Deeds as evidence: RCW 84.64.180, 84.64.190.

5.44.060

Title 5 RCW: Evidence

Instruments to be recorded or filed: RCW 65.04.030.
Record of will as evidence: RCW 11.20.060.

5.44.070 Certified copies of instruments, or transcripts of county commissioners' proceedings. Copies of all deeds or other instruments of writing, maps, documents and papers which by law are to be filed or recorded in the office of said county auditor, and all transcripts or exemplifications of the records of the proceedings of the board of county commissioners certified by said auditor under official seal, shall be admitted as prima facie evidence in all the courts of this state. [Code 1881 § 2737; 1869 p 315 § 27; RRS § 10612.]

Certified copy of plat as evidence: RCW 58.10.020.
County commissioners' proceeding to be published: RCW 36.22.020.

5.44.080 City or town ordinances as evidence. All ordinances passed by the legislative body of any city or town shall be recorded in a book to be kept for that purpose by the city or town clerk, and when so recorded the record thereof so made shall be received in any court of the state as prima facie evidence of the due passage of such ordinance as recorded. When the ordinances of any city or town are printed by authority of such municipal corporation, the printed copies thereof shall be received as prima facie evidence that such ordinances as printed and published were duly passed. [1955 c 6 § 1; Code 1881 § 2062; RRS § 1260 1/2.]

5.44.090 Copy of instrument restoring civil rights as evidence. The secretary of state and the clerk of the superior court, shall, upon demand and the payment of the fee required by law, issue a certified copy of any such instrument restoring civil rights filed in their respective offices, and every such certified copy shall be received in evidence as proof of the fact therein stated, in any court and by all election officers. [1931 c 19 § 4; 1929 c 26 § 5; RRS § 10253.]

Restoration of civil rights: Chapter 9.96 RCW.

5.44.130 Seal, how affixed. A seal of court or public office, when required to any writ, process, or proceeding to authenticate a copy of any record or document, may be affixed by making an impression directly on the paper which shall be as valid as if made upon a wafer or on wax. [Code 1881 § 434; 1877 p 95 § 436; 1869 p 116 § 430; 1854 p 196 § 338; RRS § 1258.]

Private seals abolished: RCW 64.04.090.
Seals of courts and municipalities: State Constitution Art. 27 § 9.
State seal, improper use: RCW 9.91.050.
Superior court seal: RCW 2.08.050.
Supreme court seal: Rules of court: SAR 1.
Telegraphic message, description of seal: RCW 5.52.060.

Chapter 5.45

UNIFORM BUSINESS RECORDS AS EVIDENCE ACT

Sections
5.45.010 "Business" defined.

5.45.020 Business records as evidence.
5.45.900 Construction—1947 c 53.
5.45.910 Short title.
5.45.920 Repeal of inconsistent provisions.

Rules of court: ER 803.

5.45.010 "Business" defined. The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not. [1947 c 53 § 1; Rem. Supp. 1947 § 1263-1. Formerly RCW 5.44.100.]

5.45.020 Business records as evidence. A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission. [1947 c 53 § 2; Rem. Supp. 1947 § 1263-2. Formerly RCW 5.44.110.]

5.45.900 Construction—1947 c 53. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1947 c 53 § 3; Rem. Supp. 1947 § 1263-3. Formerly RCW 5.44.120.]

5.45.910 Short title. This chapter may be cited as The Uniform Business Records as Evidence Act. [1947 c 53 § 4; Rem. Supp. 1947 § 1263-4.]

5.45.920 Repeal of inconsistent provisions. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed. [1947 c 53 § 5; Rem. Supp. 1947 § 1263-5.]

Chapter 5.46

UNIFORM PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

Sections
5.46.010 Photographic copies of business and public records as evidence.
5.46.900 Construction—1953 c 273.
5.46.910 Short title.
5.46.920 Repeal of inconsistent provisions.

5.46.010 Photographic copies of business and public records as evidence. If any business, institution, member of a profession or calling or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original,

the original may be destroyed in the regular course of the business unless the same is an asset or is representative of title to an asset held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. [1959 c 125 § 1; 1953 c 273 § 1. Formerly RCW 5.44.125.]

Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.

5.46.900 Construction—1953 c 273. This chapter shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it. [1953 c 273 § 2.]

5.46.910 Short title. This chapter may be cited as the "Uniform Photographic Copies of Business and Public Records as Evidence Act." [1953 c 273 § 3.]

5.46.920 Repeal of inconsistent provisions. All acts or parts of acts which are inconsistent with the provisions of this act are repealed. [1953 c 273 § 4.]

Chapter 5.48

PROOF—REPLACEMENT OF LOST RECORDS

Sections

- 5.48.010 Substitution of copy authorized.
- 5.48.020 Methods to replace lost court records.
- 5.48.030 Action to replace—Procedure.
- 5.48.040 Hearing on application—Evidence.
- 5.48.050 Time for appeal extended.
- 5.48.051 Costs to be taxed.
- 5.48.060 Replacement of lost or destroyed probate records.
- 5.48.070 Costs—Payment of.

Records and exhibits of superior court, destruction, reproduction: RCW 36.23.065, 36.23.067, 36.23.070.

5.48.010 Substitution of copy authorized. Whenever a pleading, process, return, verdict, bill of exceptions, order, entry, stipulation or other act, file or proceeding in any action or proceeding pending in any court of this state shall have been lost or destroyed by fire or otherwise, or is withheld by any person, such court may, upon the application of any party to such action or proceeding, order a copy or substantial copy thereof to be substituted. [1890 p 337 § 1; RRS § 1270.]

5.48.020 Methods to replace lost court records. Whenever the record required by law of the proceedings, judgment or decree in any action or other proceeding of any court in this state in which a final judgment has been rendered, or any part thereof, is lost or destroyed

by fire or otherwise, such court may, upon the application of any party interested therein, grant an order authorizing such record or parts thereof to be supplied or replaced—

(1) by a certified copy of such original record, or part thereof, when the same can be obtained;

(2) by a duly certified copy of the record in the supreme court or court of appeals of such original record of any action or proceeding that may have been removed to the supreme court or court of appeals and remains recorded or filed in said courts;

(3) by the original pleadings, entries, papers and files in such action or proceeding when the same can be obtained;

(4) by an agreement in writing signed by all the parties to such action or proceeding, their representatives or attorneys, that a substituted copy of such original record is substantially correct. [1971 c 81 § 25; 1890 p 338 § 2; RRS § 1271.]

5.48.030 Action to replace—Procedure. Whenever the record required by law, or any part thereof, of the proceedings or judgment or decree in any action or other proceeding of any court in this state in which the final judgment has been rendered, is lost or destroyed by fire or otherwise, and such loss cannot be supplied or replaced as provided in RCW 5.48.020, any person or party interested therein may make a written application to the court to which said record belongs, setting forth the substance of the record so lost or destroyed, which application shall be verified in the manner provided for the verification of pleadings in a civil action, and thereupon summons shall issue and actual service, or service by publication, shall be made upon all persons interested in or affected by said original judgment or final entry in the manner provided by law for the commencement of civil actions, provided the parties may waive the issuing or service of summons and enter their appearance to such application; and upon the hearing of such application without further pleadings, if the court finds that such record has been lost or destroyed and that it is enabled by the evidence produced to find the substance or effect thereof material to the preservation of the rights of the parties thereto, it shall make an order allowing a record, which record shall recite the substance and effect of said lost or destroyed record, or part thereof, and the same shall thereupon be recorded in said court, and shall have the same effect as the original record would have if the same had not been lost or destroyed, so far as it concerns the rights of the parties so making the application, or persons or parties so served with summons, or entering their appearance, or persons claiming under them by a title acquired subsequently to the filing of the application. [1890 p 338 § 3; RRS § 1272.]

5.48.040 Hearing on application—Evidence. Upon the hearing of the application provided in RCW 5.48.030, the court may admit in evidence oral testimony and any complete or partial abstract of such record, docket entries or indices, and any other written evidence of the contents or effect of such records and published

reports concerning such actions or proceedings, when the court is of opinion that such abstracts, writings and publications were fairly and honestly made before the loss of such records occurred. [1890 p 339 § 4; RRS § 1273.]

5.48.050 Time for appeal extended. Whenever a lost or destroyed judgment or order is one to which either party has a right to a proceeding in error or of appeal, the time intervening between the filing of the application mentioned in RCW 5.48.030 and the final order of the court thereon shall be excluded in computing the time within which such proceeding or appeal may be taken as provided by law. [1890 p 339 § 5; RRS § 1274.]

Rules of court: Cf. RAP 5.2, 18.22.

5.48.051 Costs to be taxed. The costs to be taxed, upon an application to restore a lost or destroyed record, shall be the same as are provided for like service in civil actions, and may be adjudged against either or any party to such proceeding or application, or may, in the discretion of the court, be apportioned between such parties. [1890 p 339 § 6; RRS § 1275. Formerly RCW 5.48.070, part.]

5.48.060 Replacement of lost or destroyed probate records. In case of the loss or destruction by fire or otherwise of the records, or any part thereof, of any probate court or superior court having probate jurisdiction, the judge of any such court may proceed, upon its own motion, or upon application in writing of any party in interest, to restore the records, papers, and proceedings of either of said courts relating to the estates of deceased persons, including recorded wills, wills probated, or filed for probate in such courts, all marriage records and all other records and proceedings, and for the purpose of restoring said records, wills, papers or proceedings, or any part thereof, may cause citations or other process to be issued to any and all parties to be designated by him, and may compel the attendance in court of any and all witnesses whose testimony may be necessary to the establishment of any such record or part thereof, and the production of any and all written or documentary evidence which may be by him deemed necessary in determining the true import and effect of the original records, will, paper, or other document belonging to the files of said courts; and may make such orders and decrees establishing such original record, will, paper, document or proceeding, or the substance thereof, as to him shall seem just and proper. [1957 c 9 § 5; 1890 p 340 § 7; RRS § 1276.]

Reviser's note: Jurisdiction in probate matters now vested in superior courts, see state Constitution Art. 4 § 6 (Amendment 28) and Art. 27 § 10.

5.48.070 Costs—Payment of. The costs incurred in the probate and superior courts in proceedings under RCW 5.48.051 and 5.48.060 shall be paid by the party or parties interested in such proceedings, or in whose behalf such proceedings are instituted. [1890 p 340 § 8;

RRS § 1277. FORMER PART OF SECTION: 1890 p 339 § 6; RRS § 1275, now codified as RCW 5.48.051.]

Reviser's note: See note following RCW 5.48.060.

Chapter 5.52

TELEGRAPHIC COMMUNICATIONS

Sections

5.52.010	Deemed communications in writing.
5.52.020	Notice by telegraph deemed actual notice.
5.52.030	Instrument transmitted by telegraph—Effect.
5.52.040	Bills and notes drawn by telegraph—Effect.
5.52.050	Telegraphic copies as evidence.
5.52.060	Seal and revenue stamp, how described.
5.52.070	"Copy" or "duplicate" defined.

Rules of court: Cf. CR 9(h).

Arrest by telegraph—Validity of telegraphic copy: RCW 10.31.060.

Divulging telegraph message: RCW 9.73.010.

False message as forgery: RCW 9A.60.020.

Interference with communication or its facilities: RCW 9A.48.070, 9A.48.080.

Tampering with telegraph message: RCW 9A.48.070, 9A.48.080.

Telecommunications companies: Chapter 80.36 RCW, state Constitution Art. 12 § 19.

5.52.010 Deemed communications in writing. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his or their authority, shall be held and deemed to be communications in writing. [Code 1881 § 2352; 1865 p 74 § 11; RRS § 11345.]

5.52.020 Notice by telegraph deemed actual notice. Whenever any notice, information or intelligence, written or otherwise, is required to be given, the same may be given by telegraph: *Provided*, That the dispatch containing the same be delivered to the person entitled thereto, or to his agent or attorney. Notice by telegraph shall be deemed actual notice. [Code 1881 § 2353; 1865 p 74 § 12; RRS § 11346.]

5.52.030 Instrument transmitted by telegraph—Effect. Any power of attorney, or other instrument in writing, duly proved or acknowledged, and certified so as to be entitled to record may, together with the certificate of its proof or acknowledgment, be sent by telegraph, and telegraphic copy, or duplicate thereof, shall, prima facie, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original. [Code 1881 § 2354; 1865 p 74 § 13; RRS § 11347.]

5.52.040 Bills and notes drawn by telegraph—Effect. Checks, due bills, promissory notes, bills of exchange and all orders or agreements for the payment or delivery of money, or other thing of value, may be made or drawn by telegraph, and when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer [drawee], indorser [indorsee], acceptor, holder or

bearer thereof, and shall be entitled to the same days of grace as if duly made or drawn and delivered in writing; but it shall not be lawful for any person other than the person or drawer thereof, to cause any such instrument to be sent by telegraph, so as to charge any person thereby, except as in RCW 5.52.050 otherwise provided. Whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath, by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same, to prove the existence and execution of the original writing from which the telegraph copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent. [Code 1881 § 2355; 1865 p 74 § 14; RRS § 11348.]

5.52.050 Telegraphic copies as evidence. Except as hereinbefore otherwise provided, any instrument in writing, duly certified, under his hand and official seal, by a notary public, commissioner of deeds, or clerk of a court of record, to be genuine, within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph and the telegraphic copy thereof shall, prima facie, only have the same force, effect and validity, in all respects whatsoever as the original, and the burden of proof shall rest with the party denying the genuineness, or due execution of the original. [Code 1881 § 2356; 1865 p 75 § 15; RRS § 11349.]

5.52.060 Seal and revenue stamp, how described. Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L.S.," or by the word "seal," and whenever any document bears a revenue stamp, it shall be sufficient to express the same in the telegraphic copy, by the word "stamp," without any other or further description thereof. [Code 1881 § 2359; 1865 p 76 § 18; RRS § 11350.]

Seal, how affixed: RCW 5.44.130.

5.52.070 "Copy" or "duplicate" defined. The term "telegraphic copy," or "telegraphic duplicate," whenever used in this chapter, shall be construed to mean any copy of a message, made or prepared for delivery at the office to which said message may have been sent by telegraph. [Code 1881 § 2362; 1865 p 77 § 21; RRS § 11351.]

Chapter 5.56

WITNESSES—COMPELLING ATTENDANCE

Sections	
5.56.010	When witnesses must attend—Fees and allowances.
5.56.050	Person in court required to testify.
5.56.060	Result of failure to attend.
5.56.061	Failure to attend—Fine and costs.
5.56.070	Attachment of witness.

5.56.080	To whom attachment directed—Execution.
5.56.090	Testimony of prisoner, how obtained.
5.56.100	Affidavit to procure order.

Tampering with witness: RCW 9A.72.120.

5.56.010 When witnesses must attend—Fees and allowances. Any person may be compelled to attend as a witness before any court of record, judge, commissioner, or referee, in any civil action or proceeding in this state. No such person shall be compelled to attend as a witness in any civil action or proceeding unless the fees be paid or tendered him which are allowed by law for one day's attendance as a witness and for traveling to and returning from the place where he is required to attend, together with any allowance for meals and lodging theretofore fixed as specified herein: *Provided*, That such fees be demanded by any witness residing within the same county where such court of record, judge, commissioner, or referee is located, or within twenty miles of the place where such court is located, at the time of service of the subpoena: *Provided further*, That a party desiring the attendance of a witness residing outside of the county in which such action or proceeding is pending, or more than twenty miles of the place where such court is located, shall apply ex parte to such court, or to the judge, commissioner, referee or clerk thereof, who, if such application be granted and a subpoena issued, shall fix without notice an allowance for meals and lodging, if any to be allowed, together with necessary travel expenses, and the amounts so fixed shall be endorsed upon the subpoena and tendered to such witness at the time of the service of the subpoena: *Provided further*, That the court shall fix and allow at or after trial such additional amounts for meals, lodging and travel as it may deem reasonable for the attendance of such witness. [1963 c 19 § 1; 1891 c 19 § 2; Code 1881 § 393; 1877 p 87 § 395; 1869 p 104 § 388; 1863 p 156 § 69; 1854 p 187 § 295; RRS § 1215.]

Rules of court: Cf. CR 4(f).

Arbitration, compelling attendance of witnesses: RCW 7.04.110.

District court, attachment, damages for nonappearance: RCW 12.16.030, 12.16.050.

Power to compel attendance of persons to testify: RCW 2.28.010, 2.28.020, 2.28.060, 2.28.070.

Salaried public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witness fees and mileage: Chapter 2.40 RCW.

5.56.050 Person in court required to testify. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer. [Code 1881 § 397; 1877 p 88 § 399; 1869 p 106 § 392; 1854 p 188 § 299; RRS § 1219.]

5.56.060 Result of failure to attend. If any person duly served with a subpoena and obliged to attend as a witness, shall fail to do so, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action. [Code 1881 § 398; 1877 p 88 § 400; 1869 p

106 § 393; 1854 p 188 § 300; RRS § 1220, part. FORMER PART OF SECTION: Code 1881 § 399; 1877 p 88 § 401; 1869 p 106 § 394; 1854 p 188 § 301; RRS § 1220, part, now codified as RCW 5.56.061.]

Contempt, indemnity to injured party: RCW 7.20.100.

District court, damages for nonappearance: RCW 12.16.050.

5.56.061 Failure to attend—Fine and costs. Such failure to attend as required by the subpoena, shall also be considered a contempt, and upon due proof, the witness may be punished by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid or until discharged by due course of law. [Code 1881 § 399; 1877 p 88 § 401; 1869 p 106 § 394; 1854 p 188 § 301; RRS § 1220, part. Formerly RCW 5.56.060, part.]

Rules of court: Cf. CR 45(f).

Contempts: Chapter 7.20 RCW.

Criminal contempt: Chapter 9.23 RCW, RCW 9.92.040.

Power of courts and judicial officers to punish for contempt: RCW 2.28.020, 2.28.070.

5.56.070 Attachment of witness. The court, judge, or other officer, in such case, may issue an attachment to bring such witness before them to answer for contempt, and also testify as witness in the cause in which he or she was subpoenaed. [1987 c 202 § 125; Code 1881 § 400; 1877 p 88 § 402; 1869 p 106 § 395; 1854 p 188 § 302; RRS § 1221.]

Rules of court: Cf. CR 45(f).

Intent—1987 c 202: See note following RCW 2.04.190.

District court, attachment for nonappearance: RCW 12.16.030.

5.56.080 To whom attachment directed—Execution. Such attachment may be directed to the sheriff or any deputy of any county in which the witness may be found, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he or she shows reasonable cause, to the satisfaction of the judge, for his or her omission to attend; in which case the party requiring such attachment shall pay all such costs. [1987 c 202 § 126; 1891 c 19 § 3; RRS § 1222.]

Reviser's note: Preliminary language of 1891 c 19 § 3 reads as follows: "The following section is enacted to follow section 400 of the said Code of 1881 [RCW 5.56.070], as that section shall be numbered in the code of procedure of this state:".

Rules of court: Cf. CR 45(f).

Intent—1987 c 202: See note following RCW 2.04.190.

5.56.090 Testimony of prisoner, how obtained. If the witness be a prisoner confined in a jail or prison within this state, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued. [Code 1881 § 401; 1877 p 88 § 403; 1869 p 106 § 396; 1854 p 189 § 303; RRS § 1223.]

5.56.100 Affidavit to procure order. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. [Code 1881 § 402; 1877 p 88 § 404; 1869 p 106 § 397; 1854 p 189 § 304; RRS § 1224.]

Chapter 5.60

WITNESSES—COMPETENCY

Sections	
5.60.020	Who may testify.
5.60.030	Not excluded on grounds of interest—Exception— Transaction with person since deceased.
5.60.050	Who are incompetent.
5.60.060	Who are disqualified—Privileged communications (as amended by 1987 c 212).
5.60.060	Who are disqualified—Privileged communications (as amended by 1987 c 439).

Attorney as witness: Rules of court: CR 43(g); CPR 5 (DR 5–102).

Witnesses, competency: Rules of court: ER 601.

5.60.020 Who may testify. Every person of sound mind and discretion, except as hereinafter provided, may be a witness in any action, or proceeding. [1986 c 195 § 1; Code 1881 § 388; 1877 p 85 § 390; 1869 p 103 § 383; 1854 p 186 § 289; RRS § 1210.]

5.60.030 Not excluded on grounds of interest—Exception—Transaction with person since deceased. No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility: *Provided, however,* That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, or as the guardian or limited guardian of the estate or person of any incompetent or disabled person, or of any minor under the age of fourteen years, then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased, incompetent or disabled person, or by any such minor under the age of fourteen years: *Provided further,* That this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and have no other or further interest in the action. [1977 ex.s. c 80 § 3; 1927 c 84 § 1; Code 1881 § 389; 1877 p 85 § 391; 1873 p 106 § 382; 1869 p 183 § 384; 1867 p 88 § 1; 1854 p 186 § 290; RRS § 1211.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

5.60.050 Who are incompetent. The following persons shall not be competent to testify:

(1) Those who are of unsound mind, or intoxicated at the time of their production for examination, and

(2) Those who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly. [1986 c 195 § 2; Code 1881 § 391; 1877 p 86 § 393; 1869 p 103 § 386; 1863 p 154 § 33; 1854 p 186 § 293; RRS § 1213.]

5.60.060 Who are disqualified—Privileged communications (as amended by 1987 c 212). (1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 71.05 RCW: *Provided*, That the spouse of a person sought to be detained under chapter 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

(3) A clergyman or priest shall not, without the consent of a person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

(4) A physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) ~~((Within))~~ Ninety days ~~((of))~~ after filing an action for personal injuries or wrongful death, the claimant shall ~~((elect whether or not))~~ be deemed to waive the physician-patient privilege. ~~((If the claimant does not waive the physician-patient privilege, the claimant may not put his or her mental or physical condition or that of his or her decedent or beneficiaries in issue and may not waive the privilege later in the proceedings.))~~ Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure. [1987 c 212 § 1501; 1986 c 305 § 101; 1982 c 56 § 1; 1979 ex.s. c 215 § 2; 1965 c 13 § 7; Code 1881 § 392; 1879 p 118 § 1; 1877 p 86 § 394; 1873 p 107 § 385; 1869 p 104 § 387; 1854 p 187 § 294; RRS § 1214. Cf. 1886 p 73 § 1.]

5.60.060 Who are disqualified—Privileged communications (as amended by 1987 c 439). (1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 71.05 RCW: *Provided*, That the spouse of a person sought to be detained under chapter 71.05 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to

him or her, or his or her advice given thereon in the course of professional employment.

(3) A ~~((clergyman))~~ member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 71.05.250, a physician or surgeon or osteopathic physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Within ninety days of filing an action for personal injuries or wrongful death, the claimant shall elect whether or not to waive the physician-patient privilege. If the claimant does not waive the physician-patient privilege, the claimant may not put his or her mental or physical condition or that of his or her decedent or beneficiaries in issue and may not waive the privilege later in the proceedings. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure. [1987 c 439 § 11; 1986 c 305 § 101; 1982 c 56 § 1; 1979 ex.s. c 215 § 2; 1965 c 13 § 7; Code 1881 § 392; 1879 p 118 § 1; 1877 p 86 § 394; 1873 p 107 § 385; 1869 p 104 § 387; 1854 p 187 § 294; RRS § 1214. Cf. 1886 p 73 § 1.]

Reviser's note: RCW 5.60.060 was amended twice during the 1987 legislative session, each without reference to the other.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Rules of court: Cf. CR 43(g).

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Severability—1982 c 56: "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." [1982 c 56 § 2.] This applies to RCW 5.60.060.

Nonsupport or family desertion, spouse as witness: RCW 26.20.071.

Optometrist—Client, privileged communications: RCW 18.53.200.

Psychologist—Client, privileged communications: RCW 18.83.110.

Report of abuse of children and adult dependent or developmentally disabled persons: Chapter 26.44 RCW.

Uniform reciprocal enforcement of support act—Spouse as witness: RCW 26.21.170.

Chapter 5.62

WITNESSES—REGISTERED NURSES

Sections

- 5.62.010 Definitions.
5.62.020 Registered nurse—Privileged communications—Exceptions.
5.62.030 Nurse-patient privilege subject to limitations and exemptions applicable to physician-patient privilege.

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

(1) "Registered nurse" means a registered nurse licensed under chapter 18.88 RCW.

(2) "Protocol" means a regimen to be carried out by a registered nurse and prescribed by a licensed physician under chapter 18.71 RCW, or a licensed osteopathic physician under chapter 18.57 RCW, which is consistent

with chapter 18.88 RCW and the rules adopted under chapter 18.88 RCW.

(3) "Primary care" means screening, assessment, diagnosis and treatment for the purpose of promotion of health and detection of disease or injury, as authorized by chapter 18.88 RCW and the rules adopted under chapter 18.88 RCW. [1987 c 198 § 1; 1985 c 447 § 1.]

5.62.020 Registered nurse—Privileged communications—Exceptions. No registered nurse providing primary care or practicing under protocols, whether or not the physical presence or direct supervision of a physician is required, may be examined in a civil or criminal action as to any information acquired in attending a patient in the registered nurse's professional capacity, if the information was necessary to enable the registered nurse to act in that capacity for the patient, unless:

(1) The patient consents to disclosure or, in the event of death or disability of the patient, his or her personal representative, heir, beneficiary, or devisee consents to disclosure; or

(2) The information relates to the contemplation or execution of a crime in the future, or relates to the neglect or the sexual or physical abuse of a child, or of a vulnerable adult as defined in RCW 74.34.020, or to a person subject to proceedings under chapter 71.05 or 71.34 RCW. [1986 c 212 § 1; 1985 c 447 § 2.]

5.62.030 Nurse-patient privilege subject to limitations and exemptions applicable to physician-patient privilege. Notwithstanding anything to the contrary in this chapter, the privilege created in this chapter is subject to the same limitations and exemptions contained in RCW 26.26.120, 26.44.060(3), and 51.04.050 as those limitations and exemptions relate to the physician/patient privilege of RCW 5.60.060. [1986 c 212 § 2; 1985 c 447 § 3.]

Chapter 5.64

ADMISSIBILITY—FURNISHING, OFFERING OR PROMISING TO PAY MEDICAL EXPENSES

Sections

5.64.010 Personal injury actions for negligence of persons licensed to provide health care or related services—Physicians, dentists, nurses, hospitals, etc.—Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability.

5.64.010 Personal injury actions for negligence of persons licensed to provide health care or related services—Physicians, dentists, nurses, hospitals, etc.—Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability. In any civil action for personal injuries which is based upon alleged professional negligence and which is against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant,

osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury. [1975-'76 2nd ex.s. c 56 § 3.]

Rules of court: Cf. ER 409.

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

Title 6

ENFORCEMENT OF JUDGMENTS

Chapters

- 6.01** General provisions.
- 6.08** Stay of execution.
- 6.13** Homesteads.
- 6.15** Personal property exemptions.
- 6.17** Executions.
- 6.19** Adverse claims to property levied on.
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- 6.32** Proceedings supplemental to execution.
- 6.36** Uniform enforcement of foreign judgments act.
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Alien property custodian: RCW 4.28.330.

Husband and wife, property: Chapter 26.16 RCW.

Private property, when may be taken for public debt: State Constitution Art. 11 § 13.

Railroads, personalty may be taken: State Constitution Art. 12 § 17.

Receivers: Chapter 7.60 RCW; Rules of court: CR 66.

Support of dependent children—Alternative method—1971 act: Chapter 74.20A RCW.

Chapter 6.01

GENERAL PROVISIONS

Sections

- 6.01.010 Application of chapters in Title 6 RCW to superior courts and district courts—Definitions.
- 6.01.020 Entry of judgment—Superior court—District court—Small claims.
- 6.01.030 Direction of writ when sheriff a party.
- 6.01.040 Execution against several persons—Contribution—Repayment.

6.01.010 Application of chapters in Title 6 RCW to superior courts and district courts—Definitions. Except as otherwise expressly provided, the provisions of this chapter and of chapters 6.13, 6.15, 6.17, 6.19, 6.21, 6.25, 6.26, and 6.27 RCW and chapter 6.32 RCW apply to both the superior courts and district courts of this state. If proceedings are before a district court, acts to be performed by the clerk may be performed by a district court judge if there is no clerk. As used in this title, "sheriff" includes deputies, and "execution docket" refers also to the docket of a district court. [1987 c 442 § 101.]

6.01.020 Entry of judgment—Superior court—District court—Small claims. For purposes of this title

and RCW 4.56.190 and 4.56.210, a judgment of a superior court is entered when it is delivered to the clerk's office for filing. A judgment of a district court of this state is entered on the date of the entry of the judgment in the docket of the court. A judgment of a small claims department of a district court of this state is entered on the date of the entry in the docket of that department. [1987 c 442 § 102.]

Rules of court: Cf. CR 58(b).

6.01.030 Direction of writ when sheriff a party. If the sheriff is a party or otherwise interested in an action in which a writ of execution, attachment, or replevin is to be served, the writ shall be directed to the coroner of the county, or the officer exercising the powers and performing the duties of coroner if there is no coroner, and the person to whom the writ is thus directed shall perform the duties of the sheriff. [1987 c 442 § 103.]

6.01.040 Execution against several persons—Contribution—Repayment. (1) When property liable to an execution against several persons is sold on execution, if more than a due proportion of the judgment is levied upon the property of one person, or one of them pays without a sale more than his or her due proportion, that person may compel contribution from the others. When a judgment against several persons is upon an obligation or contract of one of them as security for another, if the surety pays the full amount or any part of the judgment, either by sale of the surety's property or before sale, the surety may compel repayment from the principal.

(2) In either case covered by subsection (1) of this section, the person or surety so paying shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after the payment, notice of the payment and claim to contribution or repayment is filed with the clerk of the court where the judgment was rendered.

(3) Upon filing such notice, the clerk shall make an entry thereof in the docket where the judgment is entered. [1987 c 442 § 104.]

Chapter 6.08

STAY OF EXECUTION

Sections

- 6.08.010 In what cases allowed.
- 6.08.020 Stay bond.
- 6.08.030 Qualification and justification of sureties.
- 6.08.040 Stay for part of period.
- 6.08.050 Bond to be filed with clerk.
- 6.08.060 Judgment against sureties.

Rules of court: Cf. CR 62, 69(a).

Stay of execution: See also chapter 6.17 RCW.

6.08.010 In what cases allowed. Stay of execution shall be allowed on judgments rendered in the supreme court, the court of appeals, and superior court, as follows:

(1) In the supreme court and in the court of appeals:

(a) On all sums under five hundred dollars, thirty days.

(b) On all sums over five and under fifteen hundred dollars, sixty days.

(c) On all sums over fifteen hundred dollars, ninety days.

(2) On judgments rendered in the superior court:

(a) On all sums under three hundred dollars, two months.

(b) On all sums over three hundred and under one thousand dollars, five months.

(c) On all sums over one thousand dollars, six months. [1971 c 81 § 27; Code 1881 § 335; 1877 p 70 § 339; 1869 p 84 § 331; 1860 p 328 § 1; 1854 p 377 § 1; RRS § 522.]

Rules of court: Cf. CR 62(a).

6.08.020 Stay bond. Before any execution shall be stayed under the provisions of this chapter, the defendant shall give bond to the opposite party, in double the amount of the judgment and costs, with surety to the satisfaction of the clerk, conditioned to pay said judgment, interest, costs and increased costs, at the expiration of the period of said stay. [Code 1881 § 336; 1877 p 71 § 340; 1869 p 85 § 332; 1854 p 378 § 2; RRS § 523.]

6.08.030 Qualification and justification of sureties. The sureties upon a bond for stay of execution shall possess the same qualifications, and justify in the manner provided by law in other cases. [1957 c 8 § 4; Code 1881 § 338; 1877 p 71 § 342; 1869 p 85 § 334; 1854 p 378 § 4; RRS § 525.]

Corporate surety—Insurance: Chapter 48.28 RCW.

6.08.040 Stay for part of period. When execution has not been stayed, and execution issues before the time has elapsed for which it might have been stayed, as is herein provided, the defendant may have stay for the balance of the time, upon giving the proper bond and surety, which bond and surety shall be approved by and justified before the sheriff. [Code 1881 § 339; 1877 p 71 § 343; 1869 p 85 § 335; 1854 p 378 § 5; RRS § 526.]

6.08.050 Bond to be filed with clerk. Bonds required by this chapter shall, when taken, be lodged with the clerk of the court where the judgment was rendered, and placed on file in his office. [Code 1881 § 340; 1877 p 71 § 334; 1869 p 85 § 336; 1854 p 378 § 6; RRS § 527.]

6.08.060 Judgment against sureties. If the judgment is not satisfied, at any time after the expiration of the period for which execution has been stayed, the plaintiff, may, upon motion supported by an affidavit that such

judgment or any part thereof is unpaid, and stating how much still remains due thereon, have judgment against the sureties upon said bond, for the balance remaining due, and have an execution therefor, upon which no stay shall be allowed. [1957 c 9 § 6; Code 1881 § 337; 1877 p 71 § 341; 1869 p 85 § 33; 1854 p 378 § 3; RRS § 524.]

Chapter 6.13 HOMESTEADS

Sections	
6.13.010	Homestead, what constitutes—"Owner", "net value" defined.
6.13.020	What homestead may consist of.
6.13.030	Homestead exemption limited.
6.13.040	Automatic homestead exemption—Conditions—Declaration of homestead—Declaration of abandonment.
6.13.050	Homestead presumed abandoned, when—Declaration of nonabandonment.
6.13.060	Conveyance or encumbrance by husband and wife.
6.13.070	Homestead exempt from execution, when—Presumed valid.
6.13.080	Homestead exemption, when not available.
6.13.090	Judgment against homestead owner—Lien on excess value of homestead property.
6.13.100	Execution against homestead—Application for appointment of appraiser.
6.13.110	Application under RCW 6.13.100 must be made by verified petition—Contents.
6.13.120	Notice.
6.13.130	Hearing—Appointment of appraiser.
6.13.140	Oath, duties of appraisers.
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6.13.160	Sale, if not divisible.
6.13.170	Application of proceeds.
6.13.180	Money from sale protected.
6.13.190	Compensation of appraiser.
6.13.200	Costs.
6.13.210	Alienation in case of incompetency or disability of one spouse.
6.13.220	Notice of application for order.
6.13.230	Petition.
6.13.240	Order—Effect.

6.13.010 Homestead, what constitutes—"Owner", "net value" defined. (1) The homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

(2) As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract.

(3) As used in this chapter, the term "net value" means market value less all liens and encumbrances. [1987 c 442 § 201; 1981 c 329 § 7; 1945 c 196 § 1; 1931 c 88 § 1; 1927 c 193 § 1; 1895 c 64 § 1; Rem. Supp. 1945 § 528. Formerly RCW 6.12.010.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.020 What homestead may consist of. If the owner is married, the homestead may consist of the community or jointly owned property of the spouses or the separate property of either spouse: *Provided*, That the same premises may not be claimed separately by the husband and wife with the effect of increasing the net value of the homestead available to the marital community beyond the amount specified in RCW 6.13.030 as now or hereafter amended. When the owner is not married, the homestead may consist of any of his or her property. [1987 c 442 § 202; 1981 c 329 § 8; 1977 ex.s. c 98 § 1; 1973 1st ex.s. c 154 § 6; 1895 c 64 § 2; RRS § 530. Formerly RCW 6.12.020.]

Severability—1981 c 329: See note following RCW 6.21.020.

Severability—1973 1st ex.s. c 154: See note following RCW 6.12.030.

6.13.030 Homestead exemption limited. A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (i) the total net value of the lands, mobile home, and improvements as described in RCW 6.13.010, or (ii) the sum of thirty thousand dollars. [1987 c 442 § 203; 1983 1st ex.s. c 45 § 4; 1981 c 329 § 10; 1977 ex.s. c 98 § 3; 1971 ex.s. c 12 § 1; 1955 c 29 § 1; 1945 c 196 § 3; 1895 c 64 § 24; Rem. Supp. 1945 § 552. Formerly RCW 6.12.050.]

Severability—1981 c 329: See note following RCW 6.21.020.

Severability—1971 ex.s. c 12: "If any provision of this 1971 amendatory 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." [1971 ex.s. c 12 § 5.] For codification of 1971 ex.s. c 12, see Codification Tables, Volume 0.

6.13.040 Automatic homestead exemption—Conditions—Declaration of homestead—Declaration of abandonment. (1) Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required by the following subsections are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as prescribed in RCW 6.15.060(3)(c).

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recording officer in the county in which the land is located. However, if the owner also owns another parcel of property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that

other property and file the same for record with the recording officer in the county in which the land is located.

(3) The declaration of homestead must contain:

(a) A statement that the person making it is residing on the premises or intends to reside thereon and claims them as a homestead;

(b) A legal description of the premises; and

(c) An estimate of their actual cash value.

(4) The declaration of abandonment must contain:

(a) A statement that premises occupied as a residence or claimed as a homestead no longer constitute the owner's homestead;

(b) A legal description of the premises; and

(c) A statement of the date of abandonment.

(5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged. [1987 c 442 § 204; 1981 c 329 § 9. Formerly RCW 6.12.045.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.050 Homestead presumed abandoned, when—Declaration of nonabandonment. A homestead is presumed abandoned if the owner vacates the property for a continuous period of at least six months. However, if an owner is going to be absent from the homestead for more than six months but does not intend to abandon the homestead, and has no other principal residence, the owner may execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of nonabandonment of homestead and file the declaration for record in the office of the recording officer of the county in which the property is situated.

The declaration of nonabandonment of homestead must contain:

(1) A statement that the owner claims the property as a homestead, that the owner intends to occupy the property in the future, and that the owner claims no other property as a homestead;

(2) A statement of where the owner will be residing while absent from the homestead property, the estimated duration of the owner's absence, and the reason for the absence; and

(3) A legal description of the homestead property. [1987 c 442 § 205; 1981 c 329 § 14; 1895 c 64 § 7; RRS § 535. Formerly RCW 6.12.120.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.060 Conveyance or encumbrance by husband and wife. The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife, except that a husband or a wife or both jointly may make and execute powers of attorney for the conveyance or encumbrance of the homestead. [1987 c 442 § 206; 1983 c 251 § 1; 1895 c 64 § 6; RRS § 534. Formerly RCW 6.12.110.]

Husband and wife, property: Chapter 26.16 RCW.

6.13.070 Homestead exempt from execution, when—Presumed valid. (1) Except as provided in RCW 6.13.080, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in RCW 6.13.030, shall likewise be exempt for one year from receipt, and also such new homestead acquired with such proceeds.

(2) Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county or district in which the homestead is situated. [1987 c 442 § 207; 1981 c 329 § 13; 1945 c 196 § 2; 1927 c 193 § 2; 1895 c 64 § 4; Rem. Supp. 1945 § 532. Formerly RCW 6.12.090.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.080 Homestead exemption, when not available. The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, materialmen's or vendor's liens upon the premises;

(2) On debts secured by purchase money security agreements describing as collateral the mobile home that is claimed as a homestead or by mortgages or deeds of trust on the premises, executed and acknowledged by the husband and wife or by any unmarried claimant;

(3) On one spouse's or the community's debts existing at the time of that spouse's bankruptcy filing where (a) bankruptcy is filed by both spouses within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay spousal maintenance. [1987 c 442 § 208; 1984 c 260 § 16; 1982 c 10 § 1. Prior: 1981 c 304 § 17; 1981 c 149 § 1; 1909 c 44 § 1; 1895 c 64 § 5; RRS § 533. Formerly RCW 6.12.100.]

Severability—1984 c 260: See RCW 26.18.900.

Severability—1982 c 10: "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." [1982 c 10 § 19.]

Severability—1981 c 304: See note following RCW 26.16.030.

6.13.090 Judgment against homestead owner—Lien on excess value of homestead property. A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recording officer of

the county where the property is located. [1987 c 442 § 209; 1984 c 260 § 30. Formerly RCW 6.12.105.]

Severability—1984 c 260: See RCW 26.18.900.

6.13.100 Execution against homestead—Application for appointment of appraiser. When execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.13.080 is levied upon the homestead, the judgment creditor shall apply to the superior court of the county in which the homestead is situated for the appointment of a person to appraise the value thereof. [1987 c 442 § 210; 1895 c 64 § 9; RRS § 537. Formerly RCW 6.12.140.]

6.13.110 Application under RCW 6.13.100 must be made by verified petition—Contents. The application under RCW 6.13.100 must be made by filing a verified petition, showing:

(1) The fact that an execution has been levied upon the homestead.

(2) The name of the owner of the homestead property.

(3) That the net value of the homestead exceeds the amount of the homestead exemption. [1987 c 442 § 211; 1981 c 329 § 15; 1895 c 64 § 10; RRS § 538. Formerly RCW 6.12.150.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.120 Notice. A copy of the petition, with a notice of the time and place of hearing, must be served upon the owner and the owner's attorney of record, if any, at least ten days before the hearing. [1987 c 442 § 212; 1981 c 329 § 16; 1895 c 64 § 12; RRS § 540. Formerly RCW 6.12.170.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.130 Hearing—Appointment of appraiser. At the hearing, the judge may, upon the proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint a disinterested qualified person of the county to appraise the value of the homestead. [1987 c 442 § 213; 1984 c 118 § 1; 1895 c 64 § 13; RRS § 541. Formerly RCW 6.12.180.]

Compensation of appraiser: RCW 6.13.190.

6.13.140 Oath, duties of appraisers. The person appointed, before entering upon the performance of duties, must take an oath to faithfully perform the same. The appraiser must view the premises and appraise the market value thereof and, if the appraised value, less all liens and encumbrances, exceeds the homestead exemption, must determine whether the land claimed can be divided without material injury. Within fifteen days after appointment, the appraiser must make to the court a report in writing, which report must show the appraised value, less liens and encumbrances, and, if necessary, the determination whether or not the land can be divided without material injury and without violation of any governmental restriction. [1987 c 442 § 214; 1895 c 64 § 14; RRS § 542. Formerly RCW 6.12.190.]

6.13.150 Division of homestead. If, from the report, it appears to the court that the value of the homestead, less liens and encumbrances, exceeds the homestead exemption and the property can be divided without material injury and without violation of any governmental restriction, the court may, by an order, direct the appraiser to set off to the owner so much of the land, including the residence, as will amount in net value to the homestead exemption, and the execution may be enforced against the remainder of the land. [1987 c 442 § 215; 1981 c 329 § 17; 1895 c 64 § 17; RRS § 545. Formerly RCW 6.12.220.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.160 Sale, if not divisible. If, from the report, it appears to the court that the appraised value of the homestead property, less liens and encumbrances, exceeds the amount of the homestead exemption and the property is not divided, the court must make an order directing its sale under the execution. The order shall direct that at such sale no bid may be received unless it exceeds the amount of the homestead exemption. [1987 c 442 § 216; 1981 c 329 § 18; 1895 c 64 § 18; RRS § 546. Formerly RCW 6.12.230.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.170 Application of proceeds. If the sale is made, the proceeds must be applied in the following order: First, to the amount of the homestead exemption, to be paid to the judgment debtor; second, up to the amount of the execution, to be applied to the satisfaction of the execution; third, the balance to be paid to the judgment debtor. [1987 c 442 § 217; 1981 c 329 § 19; 1895 c 64 § 20; RRS § 548. Formerly RCW 6.12.250.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.13.180 Money from sale protected. The money paid to the owner is entitled to the same protection against legal process and the voluntary disposition of the husband or wife which the law gives to the homestead. [1987 c 442 § 218; 1981 c 329 § 20; 1973 1st ex.s. c 154 § 10; 1895 c 64 § 21; RRS § 549. Formerly RCW 6.12.260.]

Severability—1981 c 329: See note following RCW 6.21.020.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

6.13.190 Compensation of appraiser. The court shall determine a reasonable compensation for the appraiser. [1987 c 442 § 219; 1984 c 118 § 2; 1895 c 64 § 22; RRS § 550. Formerly RCW 6.12.270.]

6.13.200 Costs. The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in RCW 6.13.150 and 6.13.160 the amount so paid must be added as costs on execution, and collected accordingly. [1987 c 442 § 220; 1895 c 64 § 23; RRS § 551. Formerly RCW 6.12.280.]

6.13.210 Alienation in case of incompetency or disability of one spouse. In case of a homestead, if either the husband or wife shall be or become incompetent or disabled to such a degree that he or she is unable to assist in the management of his or her interest in the marital property and no guardian has been appointed, upon application of the other spouse to the superior court of the county in which the homestead is situated, and upon due proof of such incompetency or disability in the severity required above, the court may make an order permitting the husband or wife applying to the court to sell and convey or mortgage such homestead. [1987 c 442 § 221; 1977 ex.s. c 80 § 4; 1895 c 64 § 26; RRS § 554. Formerly RCW 6.12.300.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

6.13.220 Notice of application for order. Notice of the application for such order shall be given by publication of the same in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks prior to the hearing of such application, and a copy of such notice shall be served upon the alleged incompetent husband or wife personally, and upon the nearest relative of such incompetent or disabled husband or wife other than the applicant, resident in this state, at least three weeks prior to such application being heard, and in case there be no such relative known to the applicant, a copy of such notice shall be served upon the prosecuting attorney of the county in which such homestead is situated; and it is hereby made the duty of such prosecuting attorney, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted. [1987 c 442 § 222; 1977 ex.s. c 80 § 5; 1895 c 64 § 27; RRS § 555. Formerly RCW 6.12.310.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

6.13.230 Petition. Thirty days before the hearing of any application under the provisions of this chapter, the applicant shall present and file in the court in which such application is to be heard a petition for the order mentioned, subscribed and sworn to by the applicant, setting forth the name and age of the alleged incompetent or disabled husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; such facts necessary to show that the nonpetitioning husband or wife is incompetent or disabled to the degree required under RCW 6.13.210; and such additional facts relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition. [1987 c 442 § 223; 1977 ex.s. c 80 § 6; 1895 c 64 § 28; RRS § 556. Formerly RCW 6.12.320.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

6.13.240 Order—Effect. If the court shall make the order provided for in RCW 6.13.210, the same shall be entered upon the minutes of the court, and thereafter any sale, conveyance, or mortgage made in pursuance of such order shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage in fee simple. [1987 c 442 § 224; 1895 c 64 § 29; RRS § 557. Formerly RCW 6.12.330.]

Chapter 6.15

PERSONAL PROPERTY EXEMPTIONS

Sections

6.15.010	Exempt property specified.
6.15.020	Pension money exempt (as amended by 1987 c 64).
6.15.020	Pension money exempt (as amended by 1987 c 442).
6.15.030	Insurance money on exempt property exempt.
6.15.035	Exemption of proceeds of life, disability insurance and annuities.
6.15.040	Separate property of spouse exempt.
6.15.050	Exemptions under RCW 6.15.010—Limitations on exemptions generally.
6.15.060	Manner of claiming exemptions—Appraisal—Appraiser's fee.
6.15.070	Procedure if value of property claimed exempt exceeds exemptible value.

Exemptions from execution, etc., generally:

cemetery grounds: RCW 68.20.120 and 68.24.220.
child support obligations and earnings of nonobligated spouse: RCW 26.16.200.
construction materials subject to mechanics', materialmen's liens: RCW 60.04.150.
crime victims' compensation: RCW 7.68.070 and 51.32.040.
earnings, amount of exempt from garnishment of employer: RCW 6.27.150.
homesteads: Chapter 6.13 RCW.
incompetents' property: RCW 11.92.060.
industrial insurance benefits: RCW 51.32.040.
insurance, proceeds of annuity, disability, life and group life: RCW 48.18.400 through 48.18.430.
militia uniforms and equipment: RCW 38.40.080.
nursing home patients, money of held in trust: RCW 74.46.730.
property exempt from seizure: RCW 6.32.250.
public assistance, benefits, money of recipients in institutions: RCW 74.08.210, 74.13.070.
public retirement, insurance benefits
city employees, state-wide system: RCW 41.44.240.
first class cities, personnel and police: RCW 41.28.200, 41.20.180.
fraternal benefit society benefits: RCW 48.36A.180.
judges: RCW 2.10.180, 2.12.090.
law enforcement officers and firefighters: RCW 41.26.180.
state employees: RCW 41.40.380.
teachers: RCW 41.32.590.
volunteer firemen: RCW 41.24.240.
Washington state patrol: RCW 43.43.310.
unemployment compensation benefits: RCW 50.40.020.
work release participants, earnings of: RCW 72.65.060.

6.15.010 Exempt property specified. Except as provided in RCW 6.15.050, the following personal property shall be exempt from execution, attachment, and garnishment:

(1) All wearing apparel of every individual and family, but not to exceed seven hundred fifty dollars in value in furs, jewelry, and personal ornaments for any individual.

(2) All private libraries of every individual, but not to exceed one thousand dollars in value, and all family pictures and keepsakes.

(3) 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) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed one thousand five hundred dollars in value;

(b) Provisions and fuel for the comfortable maintenance of the individual or community for three months;

(c) Other property, except personal earnings as provided under RCW 6.15.060(1), not to exceed five hundred dollars in value, of which not more than one hundred dollars in value may consist of cash, bank accounts, savings and loan accounts, stocks, bonds, or other securities; and

(d) One motor vehicle which is used for personal transportation, not to exceed one thousand two hundred dollars in value.

[(4)] To each qualified individual, one of the following exemptions:

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

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

(c) 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 three thousand dollars in value.

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. [1987 c 442 § 301; 1983 1st ex.s. c 45 § 8; 1979 ex.s. c 65 § 1; 1973 1st ex.s. c 154 § 13; 1965 c 89 § 1; 1886 p 96 § 1; Code 1881 § 347; 1879 p 157 § 1; 1877 p 73 § 351; 1869 p 87 § 343; 1854 p 178 § 253; RRS § 563. Formerly RCW 6.16.020.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

6.15.020 Pension money exempt (as amended by 1987 c 64). (1) 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 by him, shall be exempt from execution, attachment or seizure by or under any legal process whatever.

(2) 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, or seizure by or under any legal process whatever: Provided, That 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 (as such term is defined in section 206(d) of the federal employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1056(d) or in section 401(a)(13) of the internal revenue code of 1954, as amended).

(3) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is subject to the provisions of the federal employee retirement income security act of 1974, as amended, 29 U.S.C. Secs. 101 through 1461 or that is described in sections 401(a), 403(a), 403(b), 408, or 409 (as in effect before January 1, 1984) of the internal revenue code of 1954, as amended, or both: *Provided*, That the term "employee benefit plan" shall not include any employee benefit plan that is excluded from the application of the federal employee retirement income security act of 1974, as amended, pursuant to section 4(b)(1) of that act, *29 U.S.C. Sec. 1003(b)(1). [1987 c 64 § 1; 1890 p 88 § 1; RRS § 566. Formerly RCW 6.16.030.]

*Reviser's note: This reference has been changed to correct a typographical error in 1987 c 64. The original reference was to "29 U.S.C. Sec. 10003(b)(1)," a section that does not exist.

6.15.020 Pension money exempt (as amended by 1987 c 442). 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 ((by him)), 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 section, the same shall be exempt to the family as provided in this section. [1987 c 442 § 302; 1890 p 88 § 1; RRS § 566. Formerly RCW 6.16.030.]

Reviser's note: This section, previously codified as RCW 6.16.030, was amended during the 1987 legislative session by 1987 c 442 and by 1987 c 64, each without reference to the other. Chapter 442 also directed that RCW 6.16.030 be recodified.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

6.15.030 Insurance money on exempt property exempt. If property, which by the laws of this state is exempt from execution, attachment, or garnishment, is insured and the same is lost, stolen, or destroyed, then the insurance money coming to or belonging to the person thus insured, to an amount equal to the exempt property thus destroyed, shall be exempt from execution, attachment, and garnishment. [1987 c 442 § 303; 1895 c 76 § 1; RRS § 568. Formerly RCW 6.16.050.]

6.15.035 Exemption of proceeds of life, disability insurance and annuities. See RCW 48.18.400, 48.18.410, 48.18.420 and 48.18.430.

6.15.040 Separate property of spouse exempt. All real and personal property belonging to any married person at the time of his or her marriage, and all which he or she may have acquired subsequently to such marriage, or to which he or she shall hereafter become entitled in his or her own right, and all his or her personal earnings, and all the issues, rents and profits of such real property, shall be exempt from execution, attachment, and garnishment upon any liability or judgment against the other spouse, so long as he or she or any minor heir of his or her body shall be living: *Provided*, That the separate property of each spouse shall be liable for debts owing by him or her at the time of marriage. [1987 c 442 § 304; 1973 1st ex.s. c 154 § 14; Code 1881 § 341; 1877 p 71 § 345; 1869 p 85 § 337; 1854 p 178 § 252; RRS § 570. Formerly RCW 6.16.070.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Exemption of nonobligated spouse's earnings from satisfaction of other spouse's child support obligations: RCW 26.16.200.

(1987 Ed.)

6.15.050 Exemptions under RCW 6.15.010—
Limitations on exemptions generally. (1) Wages, salary, or other compensation regularly paid for personal services rendered by the debtor claiming the exemption shall not be claimed as exempt under RCW 6.15.010, but the same may be claimed as exempt in any bankruptcy or insolvency proceeding to the same extent as allowed under the statutes relating to garnishments.

(2) No property may be exempt under RCW 6.15.010 from execution, attachment, or garnishment issued upon a judgment for all or any part of the purchase price of the property.

(3) No property may be exempt under RCW 6.15.010 from legal process issued upon a judgment for any tax levied upon such property.

(4) Nothing in this chapter shall be so construed as to prevent a debtor from creating a security interest in personal property which might be claimed as exempt, or the enforcement of such security interest against the property.

(5) Nothing in this chapter shall be construed to exempt personal property of a nonresident of this state or of an individual who has left or is about to leave this state with the intention to defraud his or her creditors.

(6) Personal property exemptions are waived by failure to claim them prior to sale of exemptible property under execution or, in a garnishment proceeding, within the time specified in RCW 6.27.160.

(7) Personal property exemptions may not be claimed by one spouse in a bankruptcy case that is not a joint case or a joint administration of the estate with the bankruptcy estate of the other spouse where (a) bankruptcy is filed by both spouses within a six-month period, and (b) one spouse exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d). [1987 c 442 § 305; 1981 c 149 § 2; 1927 c 136 § 1; Code 1881 § 348; 1877 p 74 § 352; 1869 p 88 § 344; RRS § 571. Formerly RCW 6.16.080.]

6.15.060 Manner of claiming exemptions—Appraisal—Appraiser's fee. (1) Except as provided in subsection (2) of this section, property claimed exempt under RCW 6.15.010 shall be selected by the individual entitled to the exemption, or by the husband or wife entitled to a community exemption, in the manner described in subsection (3) of this section.

(2) If, at the time of seizure under execution or attachment of property exemptible under RCW 6.15.010(3) (a), (b), or (c), the individual or the husband or wife entitled to claim the exemption is not present, then the sheriff or deputy shall make a selection equal in value to the applicable exemptions and, if no appraisal is required as permitted under subsection (4) of this section, the officer shall return the same as exempt by inventory. Any selection made as provided shall be prima facie evidence (a) that the property so selected is exempt from execution and attachment, and (b) that the property so selected is not in excess of the values specified for the exemptions.

(3)(a) A debtor who claims personal property as exempt against execution or attachment shall, at any time

before sale, deliver to the officer making the levy a list by separate items of the property claimed as exempt, together with an itemized list of all the personal property owned or claimed by the debtor, including money, bonds, bills, notes, claims and demands, with the residence of the person indebted upon the said bonds, bills, notes, claims and demands, and shall verify such list by affidavit. The officer shall immediately advise the creditor, attorney, or agent of the exemption claim and, if no appraisal is required as permitted under subsection (4) of this section, the officer shall return with the process the list of property claimed as exempt.

(b) A debtor who claims personal property exempt against garnishment shall proceed as provided in RCW 6.27.160.

(c) A debtor who claims as a homestead, under chapter 6.13 RCW, a mobile home that is not yet occupied as a homestead and that is located on land not owned by the debtor shall claim the homestead as against a specific levy by delivering to the sheriff who levied on the mobile home, before sale under the levy, a declaration of homestead that contains (i) a declaration that the debtor owns the mobile home, intends to reside therein, and claims it as a homestead, and (ii) a description of the mobile home, a statement where it is located or was located before the levy, and an estimate of its actual cash value.

(4)(a) Except as provided in (b) of this subsection, a creditor, or the agent or attorney of a creditor, who wishes to object to a claim of exemption shall proceed as provided in RCW 6.27.160.

(b) A creditor, or the agent or attorney of the creditor, who wishes to object to a claim of exemption made to a levying officer, on the ground that the property claimed exceeds exemptible value, may demand appraisal. In the absence of such demand within seven days following the officer's giving of notice of the claim, the officer shall release to the debtor the property claimed as exempt. If the creditor, or the agent or attorney of the creditor, demands an appraisal, two persons shall be chosen to appraise the property, one by the debtor and the other by the creditor, agent or attorney, and these two, if they cannot agree, shall select a third; but if either party fails to choose an appraiser, or the two fail to select a third, or if one or more of the appraisers fail to act, the court shall appoint one or more as the circumstances require. The appraisers shall forthwith proceed to make a list by separate items, of the personal property selected by the debtor as exempt, which they shall decide as exempt, stating the value of each article, and annexing to the list their affidavit to the following effect: "We solemnly swear that to the best of our judgment the above is a fair cash valuation of the property therein described," which affidavit shall be signed by two appraisers at least, and be certified by the officer administering the oaths. The list shall be delivered to the officer holding the execution or attachment and be annexed to and made part of the return, and the property therein specified shall be exempt from levy and sale, but the other personal estate of the debtor shall remain subject to execution, attachment, or garnishment.

Each appraiser shall be entitled to fifteen dollars or such larger fee as shall be fixed by the court, to be paid by the creditor if all the property claimed by the debtor shall be exempt; otherwise to be paid by the debtor. [1987 c 442 § 306; 1973 1st ex.s. c 154 § 15; Code 1881 § 349; 1877 p 74 § 353; 1869 p 88 § 346; RRS § 572. Formerly RCW 6.16.090.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

6.15.070 Procedure if value of property claimed exempt exceeds exemptible value. If from an appraisal it appears that the value of the property claimed exempt, exclusive of liens and encumbrances, exceeds the exemptible value and the property is indivisible, the property shall be put up for sale on execution, but at the sale no bid may be received unless it exceeds the exempt value. The proceeds of a sale in excess of the exempt value shall be paid, first, to the debtor to the extent of the exempt amount; second, up to the amount of the execution, to the satisfaction of the execution; third, the balance to be paid to the debtor. A judgment creditor who is the successful bidder at the sale must pay the exempt amount in cash. [1987 c 442 § 307.]

Chapter 6.17 EXECUTIONS

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6.17.170	Levy on jointly owned real estate.
6.17.180	Levy on jointly owned personal property.
6.17.190	Retention of property by judgment debtor—On bond or approval of judgment creditor.

6.17.010 Application of chapter to district courts. Unless otherwise expressly provided, all provisions of this chapter governing execution against personal property apply to proceedings before district courts of this state, but the district courts shall not have power to issue writs of execution against real property or any interest in real property or against a vendor's interest in a real estate contract. [1987 c 442 § 401.]

6.17.020 Execution authorized within ten years. The party in whose favor a judgment of a court of record of this state or a district court of this state has been or may be rendered, or the assignee, may have an execution issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment. [1987 c 442 § 402; 1980 c 105 § 4; 1971 c 81 § 26; 1929 c 25 § 2; RRS § 510. Prior: 1888 p 94 § 1; Code 1881 § 325; 1877 p 67 § 328; 1869 p 79 § 320; 1854 p 175 § 242. Formerly RCW 6.04.010.]

Rules of court: Cf. CR 58(b), 62(a), and 69(a); JCR 54.

Application—1980 c 105: See note following RCW 4.16.020.

Entry of judgment: RCW 6.01.020.

Execution on part of claim in receiver's action: RCW 7.60.050.

Stay of execution: See this chapter and chapter 6.08 RCW.

6.17.030 Execution in name of assignee or personal representative. When a judgment recovered in any court of this state has been assigned, execution may issue in the name of the assignee after the assignment has been recorded in the execution docket by the clerk of the court in which the judgment was recovered. When the person in whose name execution might have issued has died, execution may issue in the name of the executor, administrator or legal representative of such deceased person after letters testamentary or of administration or other sufficient proof has been filed in the cause and recorded in the execution docket by the clerk of the court in which the judgment was entered. [1987 c 442 § 403; 1957 c 8 § 2; 1929 c 25 § 7; RRS § 519. Prior: Code 1881 § 334; 1877 p 70 § 338; 1869 p 84 § 330. Formerly RCW 6.04.070.]

6.17.040 Stay of execution—Bond—Time periods. In addition to any stay of execution provided by court rule, stay of execution shall be allowed on judgments of the courts of this state for the following periods upon the judgment debtor filing with the clerk of the court in which the judgment was entered a bond in double the amount of the judgment and costs, with surety to the satisfaction of the clerk, conditioned to pay the judgment, interests, costs, and increased costs, at the expiration of the stay period. If execution is issued before elapse of the stay period, the judgment debtor may nevertheless stay execution for the balance of the period by filing the required bond.

(1) In the supreme court and the court of appeals, the period of stay, measured from date of entry of judgment, shall be:

(a) On all sums under five thousand dollars, thirty days;

(b) On all sums over five and under fifteen thousand dollars, sixty days; and

(c) On all sums over fifteen thousand dollars, ninety days.

(2) On judgments rendered in the superior court or a district court of this state, the period of stay shall be:

(a) On all sums under three thousand dollars, two months;

(b) On all sums over three thousand and under ten thousand dollars, five months; and

(c) On all sums over ten thousand dollars, six months. [1987 c 442 § 404.]

Rules of court: Cf. CR 62(a).

Stay of execution: See also chapter 6.08 RCW.

6.17.050 Stay of execution—Judgment against surety on bond if not paid. If execution of a judgment is stayed as permitted by RCW 6.17.040 and the judgment is not satisfied at expiration of the stay period, at any time thereafter the judgment creditor may, upon motion supported by an affidavit that the judgment or any part of it is unpaid and stating how much still remains due, have judgment against the surety on the bond for the balance remaining due, and have an execution on the judgment against the surety, on which stay shall not be allowed. [1987 c 442 § 405.]

6.17.060 Kinds of execution. There shall be three kinds of executions: First, against the property of the judgment debtor; second, for the delivery of the possession of real or personal property or such delivery with damages for withholding the same; and third, commanding the enforcement of or obedience to any other order of the court. In all cases there shall be an order to collect the costs. [1987 c 442 § 406; 1929 c 25 § 3; RRS § 511. Prior: Code 1881 § 327; 1877 p 68 § 331; 1854 p 176 § 244. Formerly RCW 6.04.020.]

6.17.070 Execution in particular cases. When any judgment of a court of this state requires the payment of money or the delivery of real or personal property, it may be enforced by execution. When a judgment of a court of record requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given or the person or officer who is required by the judgment or by law to obey the same, and a writ may be issued commanding the person or officer to obey or enforce the judgment. Refusal to do so may be punished by the court as for contempt. [1987 c 442 § 407; 1957 c 8 § 1; 1929 c 25 § 1; RRS § 512. Prior: Code 1881 § 326; 1877 p 68 § 330; 1854 p 176 § 244. Formerly RCW 6.04.030.]

6.17.080 Enforcement of judgment against county or other public corporation. No execution may issue for collection of a judgment for the recovery of money or damages against a county or other public corporation. Any such judgment may be enforced as follows:

(1) The judgment creditor may at any time when execution might issue on a like judgment against a private person, and after acknowledging satisfaction of the judgment as in ordinary cases, obtain from the clerk a certified transcript of the judgment. The clerk shall include in the transcript a copy of the memorandum of acknowledgment of satisfaction and the entry thereof as the basis for an order on the treasurer for payment. Unless the transcript contains such memorandum, no order upon the treasurer shall issue thereon.

(2) The judgment creditor shall present the certified transcript showing satisfaction of the judgment to the

officer of the county or other public corporation who is authorized to draw orders on its treasury.

(3) The officer shall draw an order on the treasurer for the amount of the judgment, in favor of the judgment creditor. The order shall be presented for payment and paid with like effect and in like manner as other orders upon the treasurer. If the proper officer of the county or other public corporation fails or refuses to draw the order for payment of the judgment as provided in this section, a writ of mandamus may be issued in the original case to compel performance of the duty. [1987 c 442 § 408; Code 1881 § 664; 1877 p 137 § 667; 1869 p 154 § 604; RRS § 953. Formerly RCW 6.04.140.]

6.17.090 Property liable to execution. All property, real and personal, of the judgment debtor that is not exempted by law is liable to execution. [1987 c 442 § 409; 1929 c 25 § 6; RRS § 518. Prior: Code 1881 § 333; 1877 p 70 § 337; 1854 p 177 § 251. Formerly RCW 6.04.060.]

6.17.100 Affidavit of judgment creditor—Filing required before issuance of writ—Contents. (1) Before a writ of execution may issue on any real property, the judgment creditor must file with the court an affidavit as described in subsection (4) of this section and must mail a copy of the affidavit to the judgment debtor at the debtor's last known address.

(2) If the affidavit attests that the premises are occupied or otherwise claimed as a homestead by the judgment debtor, the execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.13.080 must comply with RCW 6.13.100 through 6.13.170.

(3) The term "due diligence," as used in subsection (4) of this section, includes but is not limited to the creditor or the creditor's representative personally visiting the premises, contacting the occupants and inquiring about their relationship to the judgment debtor, contacting immediate neighbors of the premises, and searching the records of the auditor of the county in which the property is located to determine if a declaration of homestead or nonabandonment has been recorded by the judgment debtor.

(4) The affidavit required by this section shall include:

(a) A statement that the judgment creditor has exercised due diligence to ascertain whether the judgment debtor has sufficient nonexempt personal property to satisfy the judgment with interest and believes that there is not sufficient nonexempt personal property belonging to the judgment debtor to so satisfy the judgment. A list of personal property located shall be attached with an indication of any items that the judgment creditor believes to be exempt.

(b) A statement that the judgment creditor has exercised due diligence to ascertain whether the property is occupied or otherwise claimed by the judgment debtor as a homestead as defined in chapter 6.13 RCW.

(c) A statement based on belief whether the judgment debtor is currently occupying the property as the judgment debtor's principal residence and whether there is a declaration of homestead or nonabandonment of record. If the affidavit alleges that the property is not occupied or claimed as a homestead, the creditor must list the facts relied upon to reach that conclusion.

(d) If the judgment debtor is not occupying the property and there is no declaration of nonabandonment of record, a statement based on belief whether the judgment debtor has been absent for a period of at least six months, with facts relied upon to reach that conclusion, and, if known, the judgment debtor's current address. [1987 c 442 § 410; 1981 c 329 § 4. Formerly RCW 6.04.035.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.17.110 Form and contents of writ. (1) The writ of execution shall be issued in the name of the state of Washington, sealed with the seal of the court, and subscribed by the clerk of the court in which the judgment was entered, and shall be directed to the sheriff of the county in which the property is situated. The writ shall intelligibly refer to the judgment, stating the court, the county where the judgment was rendered, the names of the parties, the amount of the judgment if it be for money, and the amount actually due thereon; and if the judgment has been recorded, the writ shall so indicate and shall state the recording number.

(2) Before an execution is delivered on a judgment of a district court of this state, the amount of the judgment, or damages and costs, and the fees due to each person separately shall be entered in the docket and on the back of the execution. In any proceeding to enforce a judgment certified to a district court from the small claims department under RCW 12.40.110, the execution shall include the amount of the judgment owed plus reasonable costs and reasonable attorneys' fees incurred by the judgment creditor in seeking enforcement of the judgment in district court.

(3) A writ shall require substantially as follows:

(a) If the execution is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of the personal property of the debtor unless an affidavit has been filed with the court pursuant to RCW 6.17.100, in which case it shall require that the judgment be satisfied out of the real property of the debtor.

(b) If the execution is against real or personal property in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, it shall require the officer to satisfy the judgment out of such property.

(c) If the execution is for the delivery of real or personal property, it shall particularly describe the property and state its value and require the officer to deliver possession of it to the party entitled thereto, and may, at the same time, require the officer to satisfy any charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered. If the property described

in the execution cannot be delivered, and if sufficient personal property cannot be found to satisfy the judgment, it shall be satisfied out of the real property of the party against whom the judgment was rendered.

(d) If the execution is to enforce obedience to any order, it shall particularly command what is required to be done or to be omitted.

(e) If the nature of the case requires it, the execution may embrace two or more of the requirements of this section.

(f) In all cases the execution shall require the collection of all interest, costs, and increased costs thereon. [1987 c 442 § 411; 1981 c 329 § 5; 1929 c 25 § 4; RRS § 513. Prior: Code 1881 § 324; 1877 p 68 § 332; 1869 p 81 § 324; 1854 p 176 § 246. Formerly RCW 6.04.040.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.17.120 Sheriff's duty on receiving writ—Order of executing writs. The sheriff or other officer shall indorse upon the writ of execution in ink, the day, hour, and minute when the writ first came into his or her hands, and the execution shall be returned with a report of proceedings under the writ within sixty days after its date to the clerk who issued it. When there are several writs of execution or of execution and attachment against the same debtor, they shall be executed in the order in which they were received by the sheriff. [1987 c 442 § 412; 1983 1st ex.s. c 45 § 1; 1929 c 25 § 5; RRS § 515. Prior: Code 1881 § 330; 1877 p 69 § 334; 1869 p 83 § 226; 1854 p 177 § 248. Formerly RCW 6.04.050.]

6.17.130 Sheriff's execution and service of writ—Sale date—Notice to judgment debtor. When the writ of execution is against the property of the judgment debtor, the sheriff shall set the date of sale and serve on the debtor, in the same manner as service of a summons in a civil action, or cause to be transmitted by both regular mail and certified mail, return receipt requested, a copy of the writ, together with copies of RCW 6.13.010, 6.13.030, 6.13.040, 6.15.010, and 6.15.060, and shall at the time of service, or with the mailing, notify the judgment debtor of the date of sale. If service on the judgment debtor must be effected by publication, only the following notice need be published under the caption of the case:

To -----, Judgment Debtor:

A writ of execution has been issued in the above-captioned case, directed to the sheriff of ----- county, commanding the sheriff as follows:

"WHEREAS, ... [Quoting body of writ of execution]."

The sale date has been set for ----- . YOU MAY HAVE A RIGHT TO EXEMPT PROPERTY from the sale under statutes of this state, including sections 6.13.010, 6.13.030, 6.13.040, 6.15.010, and 6.15.060 of the Revised Code of Washington, in the manner described in those statutes.

[1987 c 442 § 413; 1984 c 276 § 7; 1983 c 3 § 6; 1981 c 193 § 1; Code 1881 § 355; 1877 p 76 § 358; 1869 p 91 § 351; RRS § 578. Formerly RCW 6.04.100.]

Rules of court: CR 4.

Application—1984 c 276: See note following RCW 6.21.020.

6.17.140 Sheriff's execution of writ—Satisfaction of judgment—Proceeds to clerk. The sheriff shall, at a time as near before or after service on the judgment debtor as is possible, execute the writ as follows:

(1) If property has been attached, the sheriff shall indorse on the execution, and pay to the clerk forthwith, if he or she has not already done so, the amount of the proceeds of sales of perishable property or debts due the defendant previously received, sufficient to satisfy the judgment.

(2) If the judgment is not then satisfied, and property has been attached and remains in custody, the sheriff shall sell the same, or sufficient thereof to satisfy the judgment. When property has been attached and it is probable that such property will not be sufficient to satisfy the judgment, the sheriff may, on instructions from the judgment creditor, levy on other property of the judgment debtor without delay.

(3) If then any portion of the judgment remains unsatisfied, or if no property has been attached or the same has been discharged, the sheriff shall levy on the property of the judgment debtor, sufficient to satisfy the judgment, in the manner described in RCW 6.17.160.

(4) If, after the judgment is satisfied, any property remains in custody, the sheriff shall deliver it to the judgment debtor.

(5) Until a levy, personal property shall not be affected by the execution.

(6) When property has been sold or debts received on execution, the sheriff shall pay the proceeds to the clerk who issued the writ, for satisfaction of the judgment as commanded in the writ or for return of any excess proceeds to the judgment debtor. No sheriff or other officer may retain any moneys collected on execution more than twenty days before paying the same to the clerk of the court who issued the writ. [1987 c 442 § 414.]

6.17.150 Clerk's duty on receipt of execution proceeds. Upon receipt of proceeds from the sheriff on execution, the clerk shall notify the party to whom the same is payable, and pay over the amount to that party as required by law. If any proceeds remain after satisfaction of the judgment, the clerk shall pay the excess to the judgment debtor. [1987 c 442 § 415.]

6.17.160 Sheriff's execution of writ—Manner of levy. The sheriff to whom the writ is directed and delivered shall execute the same without delay as follows:

(1) Real property shall be levied on by recording a copy of the writ, together with a description of the property attached, with the recording officer of the county in which the real estate is situated.

(2) Personal property, capable of manual delivery, shall be levied on by taking into custody.

(3) Shares of stock and other investment securities shall be levied on in accordance with the requirements of RCW 62A.8-317.

(4) A fund in court shall be levied on by leaving a copy of the writ with the clerk of the court with notice in writing specifying the fund.

(5) A franchise granted by a public or quasi-public corporation shall be levied on by (a) serving a copy of the writ on the judgment debtor as required by RCW 6.17.130 and (b) filing a copy of the writ in the office of the auditor of the county in which the franchise was granted together with a notice in writing that the franchise has been levied on to be sold, specifying the time and place of sale, the name of the owner, the amount of the judgment for which the franchise is to be sold, and the name of the judgment creditor.

(6) A vendor's interest under a real estate contract shall be levied on by (a) recording a copy of the writ, with descriptions of the contract and of the real property covered by the contract, with the recording officer of the county in which the real estate is located and (b) serving a copy of the writ, with a copy of the descriptions, on the judgment debtor in the manner as required by RCW 6.17.130.

(7) Other intangible personal property may be levied on by serving a copy of the writ on the judgment debtor as required by RCW 6.17.130. [1987 c 442 § 416; 1927 c 100 § 1; 1886 p 42 § 13; RRS § 659. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.130.]

Sheriff's fees for service of process and other official services: RCW 36.18.040.

6.17.170 Levy on jointly owned real estate. If a judgment debtor owns real estate jointly or in common with any other person, only the debtor's interest may be levied on and sold on execution, and the sheriff's notice of sale shall describe the extent of the debtor's interest to be sold as accurately as possible. [1987 c 442 § 417.]

6.17.180 Levy on jointly owned personal property. When a judgment debtor owns personal property jointly or in common with any other person, only the debtor's interest may be levied on and sold on execution, and the sheriff's notice of sale shall describe the extent of the debtor's interest as accurately as possible.

If the debtor's interest cannot be separately levied on, the sheriff shall take possession of the property unless the other person having an interest gives the sheriff a sufficient bond, with surety, conditioned to hold and manage the property according to law; and the sheriff shall then proceed to sell the interest of the defendant in such property. This section shall not be construed so as to deprive the joint or common owner of any interest in the property. [1987 c 442 § 418; 1957 c 8 § 3; Code 1881 § 752; 1877 p 152 § 757; 1869 p 174 § 694; 1854 p 220 § 499; RRS § 580. Formerly RCW 6.04.120.]

6.17.190 Retention of property by judgment debtor—On bond or approval of judgment creditor.

After levy of execution upon personal property, the sheriff may permit the judgment debtor to retain possession of the property or any part of it until the day of sale, upon the debtor executing a written bond to the sheriff with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale, and for nondelivery thereof, an action may be maintained upon such bond by the sheriff or the judgment creditor, or the judgment creditor may, on motion supported by affidavit that the property has not been delivered and the judgment remains unpaid, stating the amount unpaid, have judgment against the surety on the bond for the balance remaining due. In the alternative, the sheriff may appoint the judgment debtor as an agent to keep the property, without bond, upon written approval by the judgment creditor. [1987 c 442 § 419; Code 1881 § 358; 1877 p 77 § 361; 1869 p 92 § 354; 1854 p 182 § 268; RRS § 581. Formerly RCW 6.04.130.]

Chapter 6.19

ADVERSE CLAIMS TO PROPERTY LEVIED ON

Sections	
6.19.010	Definitions.
6.19.020	Application of chapter—Common law or other remedies not superseded.
6.19.030	Affidavit of adverse claimant—Bond—Hearing.
6.19.040	Justification of sureties.
6.19.050	Filing of affidavit by sheriff, where—Designation of parties—Trial.
6.19.060	Judgment—Costs.

6.19.010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Adverse claimant" means a person, other than the judgment debtor or defendant, who claims title or right to possession of property levied on.

(2) "Levying creditor" means the judgment creditor or plaintiff who obtained the writ of execution or attachment under which levy was made. [1987 c 442 § 501.]

6.19.020 Application of chapter—Common law or other remedies not superseded. An adverse claimant may assert a claim under the procedures provided in this chapter whether the levy was made under a writ of execution or of attachment and whether the writ was issued by a superior court or a district court of this state, but this chapter does not supersede common law or other remedies available to an adverse claimant before or after levy or sale. [1987 c 442 § 502.]

6.19.030 Affidavit of adverse claimant—Bond—Hearing. (1) An adverse claimant to property levied on may demand and receive the property from the sheriff who made the levy, upon making and delivering to the sheriff an affidavit that the property is owned by the claimant or that the claimant has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff a bond, with sureties in double

the value of such property. The bond shall be conditioned that the claimant will appear in the court specified in RCW 6.19.050 after the bond is accepted by the sheriff, and make good the claim in the affidavit or will return the property or pay its value to the sheriff.

(2) Without giving a bond, an adverse claimant who delivers to the sheriff an affidavit as described in subsection (1) of this section may, on motion made within seven days after delivering the affidavit, appear in the court specified in RCW 6.19.050, with notice to the sheriff and to the attorney of record for the levying creditor, if any, otherwise to the levying creditor, and set a hearing at which the probable validity of the claim stated in the affidavit can be considered. If the court, after the hearing, finds that the claim is probably valid, it shall direct the sheriff to release the claimed property to the claimant; otherwise, the court shall direct the sheriff to continue to hold the property unless the claimant gives a bond as provided in subsection (1) of this section. [1987 c 442 § 503; 1891 c 40 § 1; Code 1881 § 350; 1877 p 75 § 354; 1869 p 89 § 347; 1854 p 179 § 256; RRS § 573. Formerly RCW 6.20.010.]

6.19.040 Justification of sureties. If the adverse claimant posts a bond and the sheriff requires it, the sureties shall justify as in other cases, and in case they do not so justify when required, the sheriff shall retain the property; if the sheriff does not require the sureties to justify, he or she shall stand good for their sufficiency. The sheriff shall date and indorse acceptance upon the bond. [1987 c 442 § 504; 1957 c 8 § 5; Code 1881 § 351; 1877 p 75 § 354; 1869 p 89 § 347; 1854 p 179 § 256; RRS § 574. Formerly RCW 6.20.020.]

6.19.050 Filing of affidavit by sheriff, where—Designation of parties—Trial. The sheriff shall immediately return the affidavit of an adverse claimant and the bond and justification, if any, to the office of the clerk of the court that issued the writ, unless the property was seized in another county, then to the clerk of the superior court of the county in which the property was seized or, if the levy was made under a writ of a district court of this state, then to a district court, to be selected by the sheriff, in the county in which the property was seized, and this case shall stand for trial in said court. The adverse claimant shall be the plaintiff, and the sheriff and the levying creditor shall be the defendants. The sheriff or levying creditor or both of them may respond to the affidavit, but no further pleadings are required, and any party may cause the matter to be noted for trial. [1987 c 442 § 505; 1891 c 40 § 2; Code 1881 § 352; 1877 p 75 § 355; 1869 p 90 § 348; 1854 p 179 § 257; RRS § 575. Formerly RCW 6.20.030.]

6.19.060 Judgment—Costs. If the claimant makes good on all or any part of the claim to title to the property or right to possession, judgment shall be entered for the claimant to the extent the claim has been established. If the claimant has given a bond, the bond shall be canceled or, if the claimant makes good on only a

portion of the claim, a like proportion of the bond shall be canceled. If the claimant has not given a bond and the sheriff has retained possession of the property, judgment shall be entered in favor of the claimant for return of the property or its value.

If the claimant does not maintain the claim, judgment shall be rendered against the claimant. If the claimant has retained possession of the property pending trial on the claim, the judgment shall be entered against the claimant and, if the claimant has given a bond, against the sureties for the return of the property or for the value of the property or of the portion of the property for which the claim is not maintained, or for such lesser amount as shall not exceed the amount due on the original execution or attachment.

When the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; when the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; when the claimant recovers a portion of the property only, the costs shall be apportioned. When the claimant prevails, the costs may be taxed against the levying creditor or, if the court finds that the sheriff attached or levied upon the property without the exercise of due caution, the court may require the sheriff to pay the costs or any portion thereof. [1987 c 442 § 506; Code 1881 § 354; 1877 p 76 § 357; 1869 p 90 § 350; 1854 p 179 § 259; RRS § 577. Formerly RCW 6.20.050.]

Chapter 6.21

SALES UNDER EXECUTION

Sections

6.21.010	Application of chapter to district courts.
6.21.020	Notice of sale—Personal property.
6.21.030	Notice of sale—Real property—Form for publication.
6.21.040	Notice of sale of real property—Form of notice to judgment debtor.
6.21.050	Time and place of sale—Postponements.
6.21.060	Amount of property to be sold—Officers and deputies may not purchase.
6.21.070	Manner of sale of personal property—Bill of sale—Sheriff's deed if real estate contract.
6.21.080	Redemption rights—Sale of short term leasehold and vendor's interest under real estate contract absolute.
6.21.090	Manner of selling real estate—Sale by lot, acre—Measurement.
6.21.100	Sale of real property to highest bidder—Sheriff's return and certificate of sale.
6.21.110	Confirmation of sale—Objections—Resale—Distribution of sale proceeds—Filing of certificate.
6.21.120	Sheriff's deed to real property sold.
6.21.130	Effect of reversal of judgment on sale of real property.

6.21.010 Application of chapter to district courts. All the provisions of this chapter governing sales of personal property, except vendors' interests under real estate contracts, shall apply to proceedings before district courts. [1987 c 442 § 601.]

6.21.020 Notice of sale—Personal property. Before the sale of personal property under execution, order of sale or decree, notice thereof shall be given as follows:

(1) The judgment creditor shall, not less than thirty days prior to the day of sale, cause a copy of the notice of sale to be transmitted both by regular mail and by certified mail, return receipt requested, to the judgment debtor at the debtor's last known address, and by regular mail to the attorney of record for the judgment debtor, if any.

(2) The sheriff shall post typed or printed notice of the time and place of the sale in three public places in the county in which the sale is to take place, for a period of not less than four weeks prior to the day of sale. [1987 c 442 § 602; 1984 c 276 § 1; 1981 c 329 § 1; 1935 c 35 § 1; RRS § 582. Prior: 1927 c 69 § 1; 1903 c 179 § 1; 1899 c 53 § 3; 1897 c 91 § 1. Formerly RCW 6.24.010.]

Application—1984 c 276: "The 1984 amendments to RCW 6.04-.100, 6.24.010, 6.24.015, 6.24.100, 6.24.140, 6.24.145, and 6.24.180 shall apply to all executions under chapter 6.24 RCW commenced after the effective date of this act [June 7, 1984]." [1984 c 276 § 8.]

Severability—1981 c 329: "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." [1981 c 329 § 24.]

6.21.030 Notice of sale—Real property—Form for publication. Before the sale of real property under execution, order of sale, or decree, notice of the sale shall be given as follows:

(1) The judgment creditor shall:

(a) Not less than thirty days prior to the date of sale, cause a copy of the notice in the form provided in RCW 6.21.040 to be (i) served on the judgment debtor or debtors and each of them in the same manner as a summons in a civil action, or (ii) transmitted both by regular mail and by certified mail, return receipt requested, to the judgment debtor or debtors, and to each of them separately if there is more than one judgment debtor, at each judgment debtor's last known address; and

(b) Not less than thirty days prior to the date of sale, mail a copy of the notice of sale to the attorney of record for the judgment debtor, if any; and

(c) File an affidavit with the court that the judgment creditor has complied with the notice requirements of this section.

(2) The sheriff shall:

(a) For a period of not less than four weeks prior to the date of sale, post a notice in the form provided in RCW 6.21.040, particularly describing the property, in two public places in the county in which the property is located, one of which shall be at the courthouse door, where the property is to be sold, and in case of improved real estate, one of which shall be at the front door of the principal building constituting such improvement; and

(b) Publish a notice of the sale once a week, consecutively, for the same period, in any daily or weekly legal newspaper of general circulation published in the county in which the real property to be sold is situated, but if there is more than one legal newspaper published in the county, then the plaintiff or moving party in the action, suit, or proceeding has the exclusive right to designate in which of the qualified newspapers the notice shall be published, and if there is no qualified legal newspaper

published in the county, then the notice shall be published in a qualified legal newspaper published in a contiguous county, as designated by the plaintiff or moving party. The published notice shall be in substantially the following form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR _____ COUNTY

Plaintiff, | CAUSE NO.
vs. | SHERIFF'S PUBLIC
Defendant. | NOTICE OF SALE
OF REAL PROPERTY

TO: [Judgment Debtor]
The Superior Court of _____ County has directed the undersigned Sheriff of _____ County to sell the property described below to satisfy a judgment in the above-entitled action. If developed, the property address is: _____

The sale of the above-described property is to take place:

Time: _____
Date: _____
Place: _____

The judgment debtor can avoid the sale by paying the judgment amount of \$_____, together with interest, costs, and fees, before the sale date. For the exact amount, contact the sheriff at the address stated below:

SHERIFF-DIRECTOR, _____
COUNTY, WASHINGTON.

By _____, Deputy
Address _____
City _____
Washington 9 _____
Phone (...) _____

[1987 c 442 § 603.]

6.21.040 Notice of sale of real property—Form of notice to judgment debtor. The notice of sale shall be printed or typed and shall be in substantially the following form, except that if the sale is not pursuant to a judgment of foreclosure of a mortgage or a statutory lien, the notice shall also contain a statement that the sheriff has been informed that there is not sufficient personal property to satisfy the judgment and that if the judgment debtor or debtors do have sufficient personal property to satisfy the judgment, the judgment debtor or debtors should contact the sheriff's office immediately:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR _____ COUNTY

Plaintiff, | CAUSE NO.
vs. | SHERIFF'S NOTICE TO
Defendant. | JUDGMENT DEBTOR OF
SALE OF REAL PROPERTY

TO: [Judgment Debtor]

The Superior Court of _____ County has directed the undersigned Sheriff of _____ County to sell the property described below to satisfy a judgment in the above-entitled action. The property to be sold is described on the reverse side of this notice. If developed, the property address is: _____

The sale of the above-described property is to take place:

Time: _____

Date: _____

Place: _____

The judgment debtor can avoid the sale by paying the judgment amount of \$_____, together with interest, costs, and fees, before the sale date. For the exact amount, contact the sheriff at the address stated below:

This property is subject to: (check one)

- 1. No redemption rights after sale.
- 2. A redemption period of eight months which will expire at 4:30 p.m. on the _____ day of _____, 19___.
- 3. A redemption period of one year which will expire at 4:30 p.m. on the _____ day of _____, 19___.

The judgment debtor or debtors or any of them may redeem the above described property at any time up to the end of the redemption period by paying the amount bid at the sheriff's sale plus additional costs, taxes, assessments, certain other amounts, fees, and interest. If you are interested in redeeming the property contact the undersigned sheriff at the address stated below to determine the exact amount necessary to redeem.

IMPORTANT NOTICE: IF THE JUDGMENT DEBTOR OR DEBTORS DO NOT REDEEM THE PROPERTY BY 4:30 p.m. ON THE ___ DAY OF _____, 19___, THE END OF THE REDEMPTION PERIOD, THE PURCHASER AT THE SHERIFF'S SALE WILL BECOME THE OWNER AND MAY EVICT THE OCCUPANT FROM THE PROPERTY UNLESS THE OCCUPANT IS A TENANT HOLDING UNDER AN UNEXPIRED LEASE. IF THE PROPERTY TO BE SOLD IS OCCUPIED AS A PRINCIPAL RESIDENCE BY THE JUDGMENT DEBTOR OR DEBTORS AT THE TIME OF SALE, HE, SHE, THEY, OR ANY OF THEM MAY HAVE THE RIGHT TO RETAIN POSSESSION DURING THE REDEMPTION PERIOD, IF ANY, WITHOUT PAYMENT OF ANY RENT OR OCCUPANCY FEE. THE JUDGMENT DEBTOR MAY ALSO HAVE A RIGHT TO RETAIN POSSESSION DURING ANY REDEMPTION PERIOD IF THE PROPERTY IS USED FOR FARMING OR IF THE PROPERTY IS BEING SOLD UNDER A MORTGAGE THAT SO PROVIDES.

SHERIFF-DIRECTOR, _____
COUNTY, WASHINGTON.

By _____, Deputy
Address _____
City _____
Washington 9_____

Phone (...) _____

[1987 c 442 § 604; 1984 c 276 § 2; 1981 c 329 § 2. Formerly RCW 6.24.015.]

Application—1984 c 276: See note following RCW 6.21.020.
Severability—1981 c 329: See note following RCW 6.21.020.

6.21.050 Time and place of sale—Postponements.

(1) All sales of property under execution, order of sale, or decree, shall be made by auction between nine o'clock in the morning and four o'clock in the afternoon. Sale of a public franchise under execution or order of sale on foreclosure must be made at the front door of the courthouse in the county in which the franchise was granted. Sales of real property shall be made at the courthouse door on Friday unless Friday is a legal holiday and then the sale shall be held on the next following regular business day.

(2) If at the time appointed for the sale the sheriff is prevented from attending at the place appointed or, being present, should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, the sheriff may postpone the sale not exceeding one week next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation made at the same time, and by posting written notices of such adjournment under the notices of sale originally posted. The sheriff for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff indorsed upon the writ. [1987 c 442 § 605; 1953 c 126 § 1; 1899 c 53 § 4; 1897 c 50 § 2; RRS § 583. Formerly RCW 6.24.020.]

6.21.060 Amount of property to be sold—Officers and deputies may not purchase. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his or her deputy shall become a purchaser or be interested in any purchase at the sale. [1987 c 442 § 606.]

6.21.070 Manner of sale of personal property—

Bill of sale—Sheriff's deed if real estate contract. If the sale is of personal property capable of manual delivery, and not in the possession of a third person, it shall be within view of those who attend the sale and shall be sold in such parcels as are likely to bring the highest price; and upon receipt of the purchase money, the sheriff shall deliver the property to the purchaser and shall give a bill of sale containing an acknowledgment of the payment if the purchaser requests it. A vendor's interest under a real estate contract, including vendor's legal title to the real property, shall be treated as personal property for purposes of sale, but the sheriff shall give the purchaser both a bill of sale covering the vendor's interest under the contract and a sheriff's deed covering the vendor's legal title to the real property. In all other sales of personal property, the sheriff shall give the purchaser a bill of sale with an acknowledgment of payment. The sheriff shall return the proceeds with the execution to the clerk who issued the writ for payment as required by

law. [1987 c 442 § 607; Code 1881 § 362; 1877 p 78 § 365; 1869 p 94 § 358; 1854 p 183 § 270; RRS § 586. Formerly RCW 6.24.050.]

6.21.080 Redemption rights—Sale of short term leasehold and vendor's interest under real estate contract absolute. A sale of a real property estate of less than a leasehold of two years unexpired term and a sale of a vendor's interest in real property being sold under a real estate contract shall be absolute. In all other cases, real property shall be sold subject to redemption, as provided in chapter 6.23 RCW. [1987 c 442 § 608; 1899 c 53 § 5; RRS § 584. Formerly RCW 6.24.030.]

6.21.090 Manner of selling real estate—Sale by lot, acre—Measurement. (1) The form and manner of selling real estate by execution shall be as follows: The sheriff shall proclaim aloud at the place of sale, in the hearing of all the bystanders: "I am about to sell the following tracts of real estate (here reading the description,) upon the following execution:" (here reading the execution). The sheriff shall also state the amount that is required upon the execution, which shall include damages, interests and costs up to the day of sale, and increased costs. The sheriff shall then offer the land for sale.

(2) If the sale is of real property consisting of several known lots or parcels, they shall be sold separately or otherwise as the sheriff deems likely to bring the highest price, except that if an interest in a portion of such real property is claimed by a third person who, by request directed to the sheriff in writing prior to the sale or orally or in writing at the sale before the bidding is begun, requests that it be sold separately, such portion shall be sold separately. Bids on all land except town lots may be by the acre or by tract or parcel.

(3) If the land is sold by the acre and any fewer number of acres than the whole tract or parcel is sold, it shall be measured off to the purchaser in a square form, from the northeast corner of the tract or parcel, unless some person claiming an interest in the land, by request directed to the sheriff in writing prior to the sale or orally or in writing at the sale before the bidding is begun, requests that the land sold be taken from some other part or in some other form; in such case, if the request is reasonable, the officer making the sale shall sell accordingly.

(4) If an entire tract or parcel of land is sold by the acre, it shall not be measured but shall be deemed and taken to contain the number of acres named in the description, and be paid for accordingly; and if the number of acres is not contained in the description, the officer shall declare according to his or her judgment how many acres are contained therein, which shall be deemed and taken to be the true number of acres. [1987 c 442 § 609; Code 1881 § 363; 1877 p 79 § 366; 1869 p 94 § 359; 1854 p 181 § 262; RRS § 587. Formerly RCW 6.24.060.]

6.21.100 Sale of real property to highest bidder—Sheriff's return and certificate of sale. (1) The officer

shall strike off the land to the highest bidder, who shall forthwith pay the money bid to the officer, who shall return the money with the execution and the report of proceedings on the execution to the clerk of the court from which the execution issued: *Provided, however,* That when final judgment shall have been entered in the supreme court or the court of appeals and the execution upon which sale has been made issued from said court, the return shall be made to the superior court in which the action was originally commenced, and the same proceedings shall be had as though execution had issued from that superior court.

(2) At the time of the sale, the sheriff shall prepare a certificate of the sale, containing a particular description of the property sold, the price bid for each distinct lot or parcel, and the whole price paid; and when subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of proceedings upon the writ. Upon receipt of the purchase price, the sheriff shall give a copy of the certificate to the purchaser and the original certificate to the clerk of the court with the return on the execution to hold for delivery to the purchaser upon confirmation of the sale. [1987 c 442 § 610; 1971 c 81 § 28; Code 1881 § 366; 1877 p 79 § 369; 1869 p 95 § 362; 1854 p 182 § 265; RRS § 590. Formerly RCW 6.24.090.]

6.21.110 Confirmation of sale—Objections—Resale—Distribution of sale proceeds—Filing of certificate. (1) Upon the return of any sale of real estate, the clerk (a) shall enter the cause, on which the execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation"; (b) shall mail notice of the filing of the return of sale to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them; (c) shall file proof of such mailing in the action; (d) shall apply the proceeds of the sale returned by the sheriff, or so much thereof as may be necessary, to satisfaction of the judgment, including interest as provided in the judgment, and shall pay any excess proceeds as provided in subsection (5) of this section; and (e) upon confirmation of the sale, shall deliver the original certificate of sale to the purchaser.

(2) The judgment creditor or successful purchaser at the sheriff's sale is entitled to an order confirming the sale at any time after twenty days have elapsed from the mailing of the notice of the filing of the sheriff's return, on motion with notice given to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them, unless the judgment debtor, or in case of the judgment debtor's death, the representative, or any non-defaulting party to whom notice was sent shall file objections to confirmation with the clerk within twenty days after the mailing of the notice of the filing of such return.

(3) If objections to confirmation are filed, the court shall nevertheless allow the order confirming the sale,

unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received as of that date.

(4) Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. If on resale the property sells for a greater amount to any person other than the former purchaser, the clerk shall first repay to the former purchaser out of the proceeds of the resale the amount of the former purchaser's bid together with interest as is provided in the judgment.

(5) If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or the judgment debtor's representative, as the case may be, before the order is made upon the motion to confirm the sale only if the party files with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; otherwise the excess proceeds shall remain in the custody of the clerk until the sale of the property has been disposed of; but if the sale be confirmed, such excess proceeds shall be paid to the judgment debtor or representative as a matter of course.

(6) The purchaser shall file the original certificate of sale for record with the recording officer in the county in which the property is located. [1987 c 442 § 611; 1984 c 276 § 3; 1981 c 329 § 3; 1899 c 53 § 6; RRS § 591. Prior: 1897 c 50 § 14; Code 1881 § 367; 1877 p 79 § 370; 1869 p 95 § 363; 1854 p 182 § 266. Formerly RCW 6.24.100.]

Application—1984 c 276: See note following RCW 6.21.020.

Severability—1981 c 329: See note following RCW 6.21.020.

6.21.120 Sheriff's deed to real property sold. In all cases where real estate has been, or may hereafter be sold by virtue of an execution or other process, it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same, a deed of conveyance of the real estate so sold. The deeds shall be issued upon request immediately after the confirmation of sale by the court in those instances where redemption rights have been precluded pursuant to RCW 61.12.093 et seq., or immediately after the time for redemption from such sale has expired in those instances in which there are redemption rights, as provided in RCW 6.23.060. In case the term of office of the sheriff or other officer making such sale shall have expired before a sufficient deed has been executed, then the successor in office of such sheriff shall, within the time specified in this section, execute and deliver to the purchaser or other person entitled to the same a deed of the premises so sold, and such deeds shall be as valid and effectual to convey to the grantee the lands or premises so sold, as if the deed had been made by the sheriff or other officer who made the sale.

[1987 c 442 § 612; 1965 c 80 § 5; 1899 c 53 § 16; RRS § 603. Prior: 1897 c 50 § 16. Formerly RCW 6.24.220.]

Sheriff, successor to complete process: RCW 36.28.130.

6.21.130 Effect of reversal of judgment on sale of real property. A purchaser of real property sold on execution, or a purchaser's successor in interest, who is evicted in consequence of the reversal of the judgment may recover from the plaintiff in the execution the price paid with interest and the costs and disbursements of the eviction suit. [1987 c 442 § 613; Code 1881 § 368; 1877 p 80 § 371; 1869 p 96 § 364; RRS § 592. Formerly RCW 6.24.110.]

Chapter 6.23 REDEMPTION

Sections	
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6.23.100	Restraining waste during redemption period.
6.23.110	Possession during period of redemption.
6.23.120	Listing of property for sale during redemption period—Acceptance of qualifying offer if property unredeemed and deed issued—Procedure—Disposition of proceeds.

6.23.010 Redemption from sale—Who may redeem—Terms include successors. (1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in the whole or any part of the property separately sold.

(b) A creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. The persons mentioned in this subsection are termed redemptioners.

(2) As used in this chapter, the terms "judgment debtor," "redemptioner," and "purchaser," refer also to their respective successors in interest. [1987 c 442 § 701; 1899 c 53 § 7; RRS § 594. Prior: 1897 c 50 § 15. Formerly RCW 6.24.130.]

6.23.011 Voluntary relinquishment of ownership rights by mortgagor may result in loss of redemption rights. See RCW 61.12.093 through 61.12.095.

6.23.020 Time for redemption from purchaser—Amount to be paid. (1) Unless redemption rights have been precluded pursuant to RCW 61.12.093 et seq., the judgment debtor or any redemptioner may redeem the property from the purchaser at any time (a) within eight months after the date of the sale if the sale is pursuant to judgment and decree of foreclosure of any mortgage executed after June 30, 1961, which mortgage declares in its terms that the mortgaged property is not used principally for agricultural or farming purposes, and in which complaint the judgment creditor has expressly waived any right to a deficiency judgment, or (b) otherwise within one year after the date of the sale.

(2) The person who redeems from the purchaser must pay: (a) The amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption, together with (b) the amount of any assessment or taxes which the purchaser has paid thereon after purchase, and like interest on such amount from time of payment to time of redemption, together with (c) any sum paid by the purchaser on a prior lien or obligation secured by an interest in the property to the extent the payment was necessary for the protection of the interest of the judgment debtor or a redemptioner, and like interest upon every payment made from the date of payment to the time of redemption, and (d) if the redemption is by a redemptioner and if the purchaser is also a creditor having a lien, by judgment, decree, deed of trust, or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the redemptioner shall also pay the amount of such lien with like interest: *Provided, however,* That a purchaser who makes any payment as mentioned in (c) of this subsection shall submit to the sheriff the affidavit required by RCW 6.23.080, and any purchaser who pays any taxes or assessments or has or acquires any such lien as mentioned in (d) of this subsection must file the statement required in RCW 6.23.050 and provide evidence of the lien as required by RCW 6.23.080. [1987 c 442 § 702; 1984 c 276 § 4; 1965 c 80 § 4; 1961 c 196 § 1; 1899 c 53 § 8; RRS § 595. Formerly RCW 6.24.140]

Application—1984 c 276: See note following RCW 6.21.020.

6.23.030 Notice to be given during redemption period—Effect of noncompliance—Form of notice and affidavit. (1) If the property is subject to a homestead as provided in chapter 6.13 RCW, the purchaser, or the redemptioner if the property has been redeemed, shall send a notice, in the form prescribed in subsection (3) of this section, at least forty but not more than sixty days before the expiration of the judgment debtor's redemption period both by regular mail and by certified mail, return receipt requested, to the judgment debtor or debtors and to each of them separately, if there is more than one judgment debtor, at their last known address or addresses and to "occupant" at the property address. The party who sends the notice shall file a copy of the

notice with an affidavit of mailing with the clerk of the court and deliver or mail a copy to the sheriff.

(2) Failure to comply with this section extends the judgment debtor's redemption period six months. If the redemption period is extended, no further notice need be sent. Time for redemption by redemptioners shall not be extended.

(3) The notice and affidavit of mailing required by subsection (1) of this section shall be in substantially the following form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR ----- COUNTY

Plaintiff,

vs.

Defendant.

CAUSE NO.

NOTICE OF EXPIRATION OF REDEMPTION PERIOD

TO: [Judgment Debtor]

THIS IS AN IMPORTANT NOTICE AFFECTING YOUR RIGHT TO RETAIN YOUR PROPERTY.

NOTICE IS HEREBY GIVEN that the period for redemption of the following described real property ("the property") is expiring. The property is situated in the County of -----, State of Washington, to wit:

----- [legal description] ----- and commonly known as -----, which was sold by ----- County Sheriff, in ----- County, Washington on the ----- day of -----, 19--, under and by virtue of a writ of execution and order of sale issued by the court in the above-entitled action.

THE REDEMPTION PERIOD FOR THE PROPERTY IS ----- MONTHS. THE REDEMPTION PERIOD COMMENCED ON -----, 19--, AND WILL EXPIRE AT 4:30 p.m. ON -----, 19--.

If you intend to redeem the property described above you must give written notice of your intention to the ----- County Sheriff on or before -----, 19--.

Following is an itemized account of the amount required to redeem the property to date:

Item	Amount
Purchase price paid at sale	\$
Interest from date of sale to date of this notice at --- percent per annum	\$
Real estate taxes plus interest	\$
Assessments plus interest	\$
Liens or other costs paid by purchaser or purchaser's successor during redemption period plus interest	\$
Lien of redemptioner	\$
TOTAL REQUIRED TO REDEEM AS OF THE DATE OF THIS NOTICE	\$

You may redeem the property by 4:30 p.m. on or before the --- day of -----, 19--, by paying the

amount set forth above and such other amounts as may be required by law. Payment must be in the full amount and in cash, certified check, or cashier's check. Because such other amounts as may be required by law to redeem may include presently unknown expenditures required to operate, preserve, protect, or insure the property, or the amount to comply with state or local laws, or the amounts of prior liens, with interest, held by the purchaser or a redemptioner, it will be necessary for you to contact the _____ County Sheriff at the address stated below prior to the time you tender the redemption amount so that you may be informed exactly how much you will have to pay to redeem the property.

_____ SHERIFF-DIRECTOR, _____ COUNTY, WASHINGTON.

By _____, Deputy
Address _____
City _____
Washington 9_____
Phone (...) _____

IF YOU FAIL TO REDEEM THE PROPERTY BY 4:30 p.m. ON OR BEFORE THE _____ DAY OF _____, 19___, THE DATE UPON WHICH THE REDEMPTION PERIOD WILL EXPIRE, THE PURCHASER OR THE PURCHASER'S SUCCESSOR WILL BE ENTITLED TO POSSESSION OF THE PROPERTY AND MAY BRING AN ACTION TO EVICT YOU FROM POSSESSION OF THE PROPERTY.

DATED THIS ___ DAY OF _____, 19___

[Purchaser]
By
[Purchaser's attorney]
Attorneys for

STATE OF WASHINGTON }
COUNTY OF } ss.

The undersigned being first duly sworn on oath states: That on this day affiant deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the judgment debtor at the address stated on the face of this document and to "occupant" at the property address, both by certified mail, return receipt requested, and by first class mail, all of the mailings containing a copy of the document to which this affidavit is attached.

SIGNED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 19___, BY _____ (name of person making statement)

.....
Title _____
My appointment expires _____, 19___

[1987 c 442 § 703; 1984 c 276 § 5; 1981 c 329 § 6. Formerly RCW 6.24.145.]

Application—1984 c 276: See note following RCW 6.21.020.
Severability—1981 c 329: See note following RCW 6.21.020.

6.23.040 Time for redemption from redemptioner—Successive redemptions—Amount to be paid. (1) If property is redeemed from the purchaser by a redemptioner, as provided in RCW 6.23.020, another redemptioner may, within sixty days after the first redemption, redeem it from the first redemptioner. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, and such sixty-day redemption periods may extend beyond the period prescribed in RCW 6.23.020 for redemption from the purchaser.

(2) The judgment debtor may also redeem from a redemptioner, but in all cases the judgment debtor shall have the entire redemption period prescribed by RCW 6.23.020, but no longer unless the time is extended under RCW 6.23.030 or 6.23.090. If the judgment debtor redeems, the effect of the sale is terminated and the estate of the debtor is restored.

(3) A redemptioner may redeem under this section by paying the sum paid on the last previous redemption with interest at the rate of eight percent per annum, and the amount of any assessments or taxes which the last previous redemptioner paid on the property after redeeming, with like interest, and the amount of any liens by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, prior to his own, with interest. A judgment debtor who redeems from a redemptioner under this section must make the same payments as are required to effect a redemption by a redemptioner, including any lien by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the redemptioner. A redemptioner who pays any taxes or assessments, or has or acquires any such lien as herein mentioned, must file a statement as required under RCW 6.23.050. [1987 c 442 § 704; 1899 c 53 § 9; RRS § 596. Formerly RCW 6.24.150.]

6.23.050 Purchaser or redemptioner to file statements of amounts paid. A purchaser or redemptioner who pays any taxes or assessments or has or acquires a lien on the property by judgment, decree, deed of trust, or mortgage prior to that of a prospective redemptioner must file a statement thereof, for recording, with the recording officer of the county in which the property is situated before the property has been redeemed from him or her. Otherwise, the property may be redeemed without paying such tax, assessment, or lien, but if actual notice of such payments or liens has been given to the person who redeems, failure to file the statement shall not affect the right to payment from that person absent that person's demonstration of prejudice resulting from the failure to file the statement. [1987 c 442 § 705.]

6.23.060 Sheriff's deed—When issued. If no redemption is made within the redemption period prescribed by RCW 6.23.020 or within any extension of that period under any other provision of this chapter, the purchaser is entitled to a sheriff's deed; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made or notice given operating to extend the period for re-redemption, and the time for redemption by the judgment debtor has expired, the last redemptioner is entitled to receive a sheriff's deed as provided in RCW 6.21.120. [1987 c 442 § 706; 1961 c 196 § 2; 1899 c 53 § 10; RRS § 597. Prior: 1897 c 50 § 16. Formerly RCW 6.24.160.]

6.23.070 Payment on successive redemptions. When two or more persons apply to the sheriff to redeem at the same time, the sheriff shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if that person is present at time of redemption; or if not, at any time thereafter when demanded. When a sheriff wrongfully refuses to allow any person to redeem, the right to redeem shall not be prejudiced by such refusal, and the sheriff may be required, by order of the court, to allow such redemption. [1987 c 442 § 707; 1899 c 53 § 11; RRS § 598. Formerly RCW 6.24.170.]

6.23.080 Redemption procedure—Certificate to be recorded—Evidence of right to redeem. (1) The person seeking to redeem shall give the sheriff at least five days' written notice of intention to apply to the sheriff for that purpose. It shall be the duty of the sheriff to notify the purchaser or redemptioner, as the case may be, or the purchaser's or redemptioner's attorney, of the receipt of such notice, if such person is within such county. At the time specified in such notice, the person seeking to redeem may do so by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate stating the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed. A certificate of redemption must be filed and recorded in the office of the recording officer of the county in which the property is situated, and the recording officer must note the record thereof in the margin of the record of the certificate of sale.

(2) A person seeking to redeem shall submit to the sheriff the evidence of the right to redeem, as follows:

(a) A lien creditor shall submit a copy of the docket of the judgment or decree under which the right to redeem is claimed, certified by the clerk of the court where such judgment or decree is docketed; or the holder of a mortgage or deed of trust shall submit the certificate of the record thereof together with an affidavit, verified by the holder or agent, showing the amount then actually due thereon.

(b) An assignee shall submit a copy of any assignment necessary to establish the claim, verified by the affidavit of the assignee or agent, showing the amount then actually due on the judgment, decree, deed of trust, or mortgage.

(3) If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the same kind of evidence thereof as is required from a person seeking to redeem under subsection (2) of this section, and the amount due thereon, or the same may be disregarded.

(4) A purchaser who has paid a sum on a prior lien or obligation secured by an interest in the property shall submit to the sheriff an affidavit, verified by the purchaser or an agent, showing the amount paid on the prior lien or obligation, or the prior lien or obligation may be disregarded. [1987 c 442 § 708; 1984 c 276 § 6; 1899 c 53 § 12; RRS § 599. Formerly RCW 6.24.180.]

Application—1984 c 276: See note following RCW 6.21.020.

6.23.090 Rents and profits during period of redemption—Accounting—Option for reimbursement or extension on agricultural property. (1) Except as provided in subsection (3) of this section and in RCW 6.23.110, the purchaser, from the time of the sale until the redemption, and the redemptioner from the time of the redemption until another redemption, is entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received from the property by such purchaser or redemptioner, preceding the redemption thereof from him or her, the amount of such rents and profits, over and above the expenses paid for operating, caring for, protecting and insuring the property, shall be a credit upon the redemption money to be paid.

(2) If a redemptioner or other person entitled to redeem, before the expiration of the time allowed for such redemption, files with the sheriff a demand in writing for a written and verified statement of the amounts of rents and profits thus received and expenses paid and incurred, the period for redemption is extended five days after such a sworn statement is given by the person receiving such rents and profits, or by his or her agent, to the person making the demand, or to the sheriff. It shall be the duty of the sheriff to serve a copy of such demand upon the person receiving such rents and profits, his or her agent or his or her attorney, if service can be made in the county where the property is situated. If such person shall, for a period of ten days after such demand has been given to the sheriff, fail or refuse to give such statement, the redemptioner or other person entitled to redeem who made the demand may bring an action within sixty days after making such demand, but not later, in any court of competent jurisdiction, to compel an accounting and disclosure of such rents, profits and expenses, and until fifteen days from and after the final determination of such action the right of redemption is extended to such redemptioner or other person entitled to redeem who made the demand. If a sworn statement is given by the purchaser or other person receiving such rents and profits, and the redemptioner or other person entitled to redeem who made the demand, desires to contest the correctness of the statement, he or she must first redeem in accordance with such sworn statement,

and if he or she desires to bring an action for an accounting thereafter he or she may do so within thirty days after such redemption, but not later.

(3) If such property is farming or agricultural property and is in possession of any purchaser or any previous redemptioner and is redeemed after the first day of April and before the first day of December, and the purchaser or previous redemptioner or the tenant of either has performed any work in preparing such property for crops or has planted crops, such purchaser or previous redemptioner shall have the option to demand reimbursement for such work and labor or to retain possession of such property until the first day of December following, and the new redemptioner shall be entitled to collect the reasonable rental value thereof during such farming year, unless such reasonable rental shall have been collected by such purchaser or previous redemptioner and accounted for to the new redemptioner. [1987 c 442 § 709; 1899 c 53 § 13; RRS § 600. Formerly RCW 6.24.190.]

6.23.100 Restraining waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property. But it is not waste for the person in possession of the property at the time of the sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repairs of fences, or for fuel in his or her family while occupying the property. [1987 c 442 § 710; 1899 c 53 § 14; RRS § 601. Formerly RCW 6.24.200.]

6.23.110 Possession during period of redemption. (1) Except as provided in this section and RCW 6.23.090, the purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption.

(2) If a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired, the court shall make its decree to that effect and the mortgagor shall have such right.

(3) As to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used, at the time of sale, for farming purposes, the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his successor in interest shall, if the judgment debtor does not redeem, have a lien upon the crops

raised or harvested thereon during said period of redemption, for interest on the purchase price at the rate of six percent per annum during said period of redemption and for taxes becoming delinquent during the period of redemption together with interest thereon.

(4) In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation. [1987 c 442 § 711; 1981 c 329 § 21; 1961 c 196 § 3; 1957 c 8 § 6; 1939 c 94 § 1; 1927 c 93 § 1; 1899 c 53 § 15; RRS § 602. Formerly RCW 6.24.210.]

Severability—1981 c 329: See note following RCW 6.21.020.

6.23.120 Listing of property for sale during redemption period—Acceptance of qualifying offer if property unredeemed and deed issued—Procedure—Disposition of proceeds. (1) Except as provided in subsection (4) of this section, during the period of redemption for any property that a person would be entitled to claim as a homestead, any licensed real estate broker within the county in which the property is located may nonexclusively list the property for sale whether or not there is a listing contract. If the property is not redeemed by the judgment debtor and a sheriff's deed is issued under RCW 6.21.120, then the property owner shall accept the highest current qualifying offer upon tender of full cash payment within two banking days after notice of the pending acceptance is received by the offeror. If timely tender is not made, such offer shall no longer be deemed to be current and the opportunity shall pass to the next highest current qualifying offer, if any. Notice of pending acceptance shall be given for the first highest current qualifying offer within five days after delivery of the sheriff's deed under RCW 6.21.120 and for each subsequent highest current qualifying offer within five days after the offer becoming the highest current qualifying offer. An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker listing the property and is at least equal to the sum of: (a) One hundred twenty percent greater than the redemption amount determined under RCW 6.23.020 and (b) the normal commission of the real estate broker or agent handling the offer.

(2) The proceeds shall be divided at the time of closing with: (a) One hundred twenty percent of the redemption amount determined under RCW 6.23.020 paid to the property owner, (b) the real estate broker's or agent's normal commission paid, and (c) any excess paid to the judgment debtor.

(3) Notice, tender, payment, and closing shall be made through the real estate broker or agent handling the offer.

(4) This section shall not apply to mortgage or deed of trust foreclosures under chapter 61.12 or 61.24 RCW. [1987 c 442 § 712; 1981 c 329 § 23. Formerly RCW 6.24.230.]

Severability—1981 c 329: See note following RCW 6.21.020.

Chapter 6.25
ATTACHMENT

Sections

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6.25.010 Application of chapter to district courts.

Unless otherwise expressly provided, all the provisions of this chapter governing attachment of personal property apply to proceedings before district courts of this state, but the district courts shall not have power to issue writs of attachment against real property or any interest in real property or against vendors' interests under real estate contracts. [1987 c 442 § 801.]

6.25.020 Time for granting. The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, attached in the manner prescribed in this chapter, as security for the satisfaction of such judgment as the plaintiff may recover. [1987 c 442 § 802; 1886 p 39 § 1; RRS § 647. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.010.]

Rules of court: Cf. CR 64.

6.25.030 Issuance of writ—Grounds. The writ of attachment may be issued by the court in which the action is pending on one or more of the following grounds:

- (1) That the defendant is a foreign corporation; or

(2) That the defendant is not a resident of this state; or

(3) That the defendant conceals himself so that the ordinary process of law cannot be served upon him; or

(4) That the defendant has absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him; or

(5) That the defendant has removed or is about to remove any of his property from this state, with intent to delay or defraud his creditors; or

(6) That the defendant has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of his property, with intent to delay or defraud his creditors; or

(7) That the defendant is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or

(8) That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or

(9) That the damages for which the action is brought are for injuries arising from the commission of some felony, gross misdemeanor, or misdemeanor; or

(10) That the object for which the action is brought is to recover on a contract, express or implied. [1987 c 442 § 803; 1973 1st ex.s. c 154 § 16; 1923 c 159 § 1; 1886 p 39 § 2; RRS § 648. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.020.]

Rules of court: CR 64.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

6.25.040 Grounds if debt not due. An action may be commenced and the property of a debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness, and when the complaint and the affidavit allege, in addition to that fact, one or more of the following grounds:

(1) That the defendant is about to dispose or has disposed of his property in whole or in part with intent to defraud his creditors; or

(2) That the defendant is about to remove from the state and refuses to make any arrangements for securing the payment of the debt when it falls due, and the contemplated removal was not known to the plaintiff at the time the debt was contracted; or

(3) That the debt was incurred for property obtained under false pretenses. [1987 c 442 § 804; 1886 p 39 § 3; RRS § 649. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.030.]

Rules of court: Cf. CR 64.

6.25.050 Procedure when debt not due. If the debt or demand for which the attachment is sued out is not due

at the time of the commencement of the action, the defendant is not required to file any pleadings until the maturity of such debt or demand, but the defendant may, in his or her discretion, do so, and go to trial as early as the cause is reached. No final judgment shall be rendered in such action until the debt or demand upon which it is based becomes due, unless the defendant consents by filing pleadings or otherwise. However, property of a perishable nature may be sold as provided in RCW 6.25.220. [1987 c 442 § 805; 1886 p 40 § 4; RRS § 650. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.040.]

6.25.060 Application for writ—Affidavit. (1) The plaintiff or someone on plaintiff's behalf shall apply for a writ of attachment by affidavit, alleging that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant and also alleging that affiant has reason to believe and does believe the following, together with specific facts on which affiant's belief in the allegations is based: (a) That the defendant is indebted to the plaintiff (specifying the nature of the claim and the amount of such indebtedness over and above all just credits and offsets), and (b) that one or more of the grounds stated in RCW 6.25.030 for issuance of a writ of attachment exists.

(2) If the action is based on a debt not due, the ground alleged under subsection (1)(b) of this section must be one stated in RCW 6.25.040 for attachment on a debt not due, and affiant shall also allege reason to believe and belief that nothing but time is wanting to fix an absolute indebtedness due from defendant, together with specific facts on which the affiant's belief in the allegations is based. [1987 c 442 § 806.]

6.25.070 Issuance of writ—Notice—Hearing—Issuance without notice—Forms for notice. (1) Except as provided in subsection (2) of this section, the court shall issue a writ of attachment only after prior notice to defendant, given in the manner prescribed in subsections (4) and (5) of this section, with an opportunity for a prior hearing at which the plaintiff shall establish the probable validity of the claim sued on and that there is probable cause to believe that the alleged ground for attachment exists.

(2) Subject to subsection (3) of this section, the court shall issue the writ without prior notice to defendant and an opportunity for a prior hearing only if:

(a)(i) The attachment is to be levied only on real property, or (ii) if it is to be levied on personal property, the ground alleged for issuance of attachment is one appearing in RCW 6.25.030 (5) through (7) or in RCW 6.25.040(1) or, if attachment is necessary for the court to obtain jurisdiction of the action, the ground alleged is one appearing in RCW 6.25.030 (1) through (4); and

(b) The court finds, on the basis of specific facts alleged in the affidavit, after an ex parte hearing, that there is probable cause to believe the allegations of plaintiff's affidavit.

(3) If a writ is issued under subsection (2) of this section without prior notice to defendant, after seizure of property under the writ the defendant shall be entitled to prompt notice of the seizure and of a right to an early hearing, if requested, at which the plaintiff shall establish the probable validity of the claim sued on and that there is probable cause to believe that the alleged ground for attachment exists. Such notice shall be given in the manner prescribed in subsections (4) and (5) of this section.

(4) When notice and a hearing are required under this section, notice may be given by a show cause order stating the date, time, and place of the hearing. Notice required under this section shall be jurisdictional and, except as provided for published notice in subsection (5) of this section, notice shall be served in the same manner as a summons in a civil action and shall be served together with: (a) Copies of the plaintiff's affidavit and of the writ; (b) if the defendant is an individual, copies of homestead statutes, RCW 6.13.010, 6.13.030, and 6.13.040, if real property is to be attached, or copies of exemption statutes, RCW 6.15.010 and 6.15.060, if personal property is to be attached; and (c) if the plaintiff has proceeded under subsection (2) of this section, a copy of a "Notice of Right to Hearing" in substantially the following form:

NOTICE OF RIGHT TO HEARING

In a lawsuit against you, a Washington court has issued the Writ of Attachment included with this notice. Under the writ a sheriff or sheriff's deputy has or will put a lien against your real estate or has seized or will seize other property of yours to hold until the court decides the lawsuit.

Delivery of this notice of your rights is required by law.

YOU HAVE THE RIGHT TO A HEARING. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the statements in the enclosed affidavit are true and also that the claim stated in the lawsuit is probably valid, or else your property will be released.

If the defendant is an individual, the following paragraph shall be added to the notice:

YOU MAY ALSO HAVE A RIGHT TO HAVE YOUR PROPERTY RELEASED if it is exempt property as described in the copies of statutes included with this notice and if you claim your exemptions in the way described in the statutes.

(5) If service of notice on the defendant must be effected by publication, only the following notice need be published under the caption of the case:

To Defendant:

A writ of attachment has been issued in the above-captioned case, directed to the Sheriff of County, commanding the Sheriff as follows:

"WHEREAS, . . . [Quoting body of writ of attachment]"

YOU HAVE A RIGHT TO ASK FOR A HEARING. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the ground for attachment alleged in an affidavit filed with the court exists and also that the claim stated in the lawsuit is probably valid, or else the attachment will be discharged.

If the defendant is an individual, the following paragraph shall be added to the published notice:

YOU MAY ALSO HAVE A RIGHT TO HAVE YOUR PROPERTY RELEASED if it is exempt property as described in Washington exemption statutes, including sections 6.13.010, 6.13.030, 6.13.040, 6.15.010, and 6.15.060 of the Revised Code of Washington, in the manner described in those statutes.

[1987 c 442 § 807.]

6.25.080 Attachment bond (as amended by 1987 c 202). Before the writ of attachment shall issue the plaintiff, or someone in his or her behalf, shall execute and file with the clerk a surety bond or undertaking in the sum in no case less than three hundred dollars, in the superior court, nor less than fifty dollars in the ((justice)) district court, and double the amount for which plaintiff demands judgment, conditional that the plaintiff will prosecute his or her action without delay and will pay all costs that may be adjudged to the defendant, and all damages which he or she may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out. With said bond or undertaking there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities, and property exempt from execution. No person not qualified to become surety as provided by law, shall be qualified to become surety upon a bond or undertaking for an attachment: *Provided*, That when it is desired to attach real estate only, and such fact is stated in the affidavit for attachment and the ground of attachment is that the defendant is a foreign corporation or is not a resident of the state, or conceals himself or herself so that the ordinary process of law cannot be served upon him or her, or has absconded or absented himself or herself from his or her usual place of abode, so that the ordinary process of law cannot be served upon him or her, the writ of attachment shall issue without bond or undertaking by or on behalf of the plaintiff: *And provided further*, That when the claim, debt or obligation whether in contract or tort, upon which plaintiff's cause of action is based, shall have been assigned to him or her, and his or her immediate or any other assignor thereof retains or has any interest therein, then the plaintiff and every assignor of said claim, debt or obligation who retains or has any interest therein, shall be jointly and severally liable to the defendant for all costs that may be adjudged to him or her and for all damages which he or she may sustain by reason of the attachment, should the same be wrongfully, oppressively or maliciously sued out. [1987 c 202 § 128; 1957 c 51 § 1; 1903 c 41 § 1; 1886 p 40 § 6; RRS § 652. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.060.]

Intent—1987 c 202: See note following RCW 2.04.190.

6.25.080 Issuance of writ—Attachment bond (as amended by 1987 c 442). (1) Except as provided in subsection (2) of this section, before the writ of attachment shall issue, the plaintiff, or someone in ((his)) the plaintiff's behalf, shall execute and file with the clerk a surety bond or undertaking in the sum in no case less than three ((hundred)) thousand dollars, in the superior court, nor less than ((fifty)) five hundred dollars in the ((justice)) district court, and double the amount for which plaintiff demands judgment, or such other amount as the court shall fix, conditional that the plaintiff will prosecute ((his)) the action without delay and will pay all costs that may be

adjudged to the defendant, and all damages ((which he)) that the defendant may sustain by reason of the writ of attachment or of additional writs issued as permitted under RCW 6.25.120, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out. ((With said bond or undertaking there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities, and property exempt from execution. No person not qualified to become surety as provided by law, shall be qualified to become surety upon a bond or undertaking for an attachment: *Provided*, That when))

(2) If it is desired to attach real estate only, and such fact is stated in the affidavit for attachment, and the ground of attachment is that the defendant is a foreign corporation or is not a resident of the state, or conceals himself or herself or has absconded or is absent from his or her usual place of abode so that the ordinary process of law cannot be served upon him or her, ((or has absconded or absented himself from his usual place of abode, so that the ordinary process of law cannot be served upon him;)) the writ of attachment shall issue without bond or undertaking by or on behalf of the plaintiff ((*And provided further*, That when the claim, debt or obligation whether in contract or tort, upon which plaintiff's cause of action is based, shall have been assigned to him, and his))

(3) If the plaintiff sues on an assigned claim and the plaintiff's immediate or any other assignor thereof retains or has any interest ((therein)) in the claim, then the plaintiff and every assignor ((of said claim, debt or obligation)) who retains or has any interest therein ((;)) shall be jointly and severally liable ((to the defendant)) for all costs that may be adjudged to ((him)) the defendant and for all damages ((which he)) that the defendant may sustain by reason of the attachment, should the same be wrongfully, oppressively or maliciously sued out. [1987 c 442 § 808; 1957 c 51 § 1; 1903 c 41 § 1; 1886 p 40 § 6; RRS § 652. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.060.]

Reviser's note: This section, previously codified as RCW 7.12.060, was amended during the 1987 legislative session by 1987 c 442 and by 1987 c 202, each without reference to the other. Chapter 442 also directed that RCW 7.12.060 be recodified.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Corporate surety—Insurance: Chapter 48.28 RCW.

Court may fix amount of bond in civil actions: RCW 4.44.470.

6.25.090 Bond—Additional security. The defendant may, at any time before judgment, move the court or judge for additional security on the part of the plaintiff, or for security if none was required under RCW 6.25.080, and if, on such motion, the court or judge is satisfied that security or additional security should be required or that the surety in the plaintiff's bond has removed from this state or is not sufficient, the attachment may be vacated, and restitution directed of any property taken under it, unless in a reasonable time, to be fixed by the court or judge, further security is given by the plaintiff in form as provided in RCW 6.25.080. [1987 c 442 § 809; 1886 p 40 § 7; RRS § 653. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.070.]

6.25.100 Action on bond—Damages and attorney's fees. In an action on such bond, if it is shown that the attachment was wrongfully sued out, the defendant may recover the actual damages sustained and reasonable attorney's fees to be fixed by the court. If it is shown that such attachment was sued out maliciously, the defendant may recover exemplary damages, and the defendant

need not wait until the principal suit is determined before suing on the bond. [1987 c 442 § 810; 1886 p 41 § 8; RRS § 654. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.080.]

6.25.110 Contents of writ—Levy of attachment. The writ of attachment shall be directed to the sheriff of any county in which property of the defendant may be, and shall require the sheriff to attach and safely keep the property of such defendant within the county, to the requisite amount, which shall be stated in conformity with the affidavit. The sheriff shall in all cases attach the amount of property directed, if sufficient property not exempted from execution be found in the county, giving that in which the defendant has a legal and unquestionable title a preference over that in which title is doubtful or only equitable, and the sheriff shall as nearly as the circumstances of the case will permit, levy upon property fifty percent greater in valuation than the amount that the plaintiff in the affidavit claims to be due. When property is seized on attachment, the court may allow to the officer having charge thereof such compensation for the trouble and expenses in keeping the same as shall be reasonable and just. [1987 c 442 § 811; 1886 p 41 § 9; RRS § 655. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.090.]

6.25.120 Writs to different counties—Successive writs. If a writ of attachment has been issued in a case, other writs of attachment may be issued in the same case from the court to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court, and if more property is attached in the aggregate than the plaintiff is entitled to have held, the surplus must be abandoned and the plaintiff pay all costs incurred in relation to such surplus. After the first writ has issued, it shall not be necessary for the plaintiff to file any further affidavit or bond unless the court otherwise directs, but the plaintiff shall be entitled to as many writs as may be necessary to secure the amount claimed. [1987 c 442 § 812; 1886 p 41 § 10; RRS § 656. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.100.]

6.25.130 Writ—Notation of time received—Order of execution. The sheriff or other officer shall indorse upon the writ of attachment in ink the day, hour, and minute when the writ first came into the officer's hands. Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff. [1987 c 442 § 813; 1886 p 41 § 11; RRS § 657. Prior: Code 1881 §§

174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.110.]

Rules of court: Cf. CR 64.

6.25.140 Manner of levy. The sheriff shall levy on property to be attached in the same manner as provided for execution in RCW 6.17.160, 6.17.170, and 6.17.180. [1987 c 442 § 814.]

6.25.150 Property may be followed to adjoining county. If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the property in an adjoining county within twenty-four hours after removal. [1987 c 442 § 815; 1886 p 42 § 12; RRS § 658. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.120.]

6.25.160 Sheriff's inventory—Return. The sheriff shall make a full inventory of the property attached and return the inventory with the writ of attachment within twenty days of receipt of the writ, with a return of the proceedings indorsed on or attached to the writ. If the writ was issued at the same time as the summons, the sheriff shall return the writ with the summons. [1987 c 442 § 816; 1927 c 100 § 2; 1886 p 43 § 21; RRS § 666. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.200.]

6.25.170 Examination of defendant as to property. Whenever it appears by the affidavit of the plaintiff that the plaintiff has probable cause to believe that a ground for attachment exists and it appears by the plaintiff's affidavit or by the return of the attachment that no property is known to the plaintiff or officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the court or judge by affidavit that the defendant has property within the state not exempted, the defendant may be required by such court or judge to attend before the court or judge or referee appointed by the court or judge and give information on oath respecting the property. [1987 c 442 § 817; 1886 p 42 § 14; RRS § 660. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871 pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.140.]

6.25.180 Motion to discharge attachment—Affidavits in opposition—Discharge. (1) The defendant may at any time, after appearing in the action and before giving bond as provided in RCW 6.25.190, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought or to the judge thereof, that the writ of attachment be discharged on the ground that it was improperly or irregularly issued.

(2) If the motion is made on affidavits on the part of the defendant, the plaintiff may oppose the same by affidavits in addition to those on which the attachment was issued or by other evidence, unless otherwise ordered by the court.

(3) If upon application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

(4) Whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be recorded with the recording officer of the county in which the writ of attachment has been recorded. [1987 c 442 § 818; 1927 c 131 § 1; 1886 p 45 § 31; RRS § 673. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.270.]

Rules of court: CR 7(b), 64.

6.25.190 Discharge of attachment—Bond—Judgment on bond. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment or after the return thereof by the clerk, conditional on the performance of the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action. The bond shall be part of the record and, if judgment goes against the defendant, the judgment shall be entered against the defendant and the sureties. [1987 c 442 § 819; 1886 p 45 § 29; RRS § 671. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.250]

6.25.200 Appointment of receiver for property. The court before whom the action is pending may at any time appoint a receiver to take possession of property attached under the provisions of this chapter and to collect, manage, and control the property and pay over the proceeds according to the nature of the property and the exigency of the case. [1987 c 442 § 820; 1957 c 9 § 9; 1886 p 42 § 15; RRS § 661. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.150.]

6.25.210 Duties of plaintiff and sheriff if defendant in bankruptcy—Notice of attachment—Release of property. (1) If, before or after levy under a writ of attachment, the plaintiff receives notice that the defendant has become a debtor in a bankruptcy case, the plaintiff shall immediately give written notice of that fact to the sheriff.

(2) If, before levying under a writ of attachment, a sheriff receives notice that the defendant has become a debtor in a bankruptcy case, the sheriff shall immediately give written notice of that fact to the plaintiff's attorney of record, if any, otherwise to the plaintiff, and

shall not be bound to levy under the writ. If, after levying on property under a writ of attachment, a sheriff receives such notice, the sheriff shall give written notice of the attachment, describing the property seized, to the trustee in the bankruptcy case if there is one, otherwise to the bankruptcy court, with a copy to the plaintiff's attorney of record, if any, otherwise to the plaintiff, and shall transfer the property to the trustee on demand or as the bankruptcy court otherwise directs. If no demand is made on the sheriff for surrender of the property and the sheriff thereafter receives notice of the closing of the bankruptcy case, the sheriff shall give written notice by first class mail to the plaintiff's attorney of record, if any, otherwise to the plaintiff, requiring that the plaintiff release the property or obtain a renewal of the writ from the court, and, if the plaintiff fails to release the property or to apply for a renewal within fourteen days after the mailing of the sheriff's notice, the sheriff may release the property to the defendant. [1987 c 442 § 821.]

6.25.220 Sale of property before judgment. If any property attached be perishable or in danger of serious and immediate waste or decay, the sheriff shall sell the same in the manner in which such property is sold on execution. Whenever it shall be made to appear satisfactorily to the court or judge that the interest of the parties to the action will be subserved by a sale of any attached property, the court or judge may order such property to be sold in the same manner as like property is sold under execution. Such order shall be made only upon notice to the adverse party or that party's attorney in case such party shall have been personally served with a summons in the action. [1987 c 442 § 822; 1957 c 51 § 2; 1886 p 42 § 16; RRS § 662. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.160.]

6.25.230 Custody of property or proceeds. All moneys received by the sheriff under the provisions of this chapter shall be paid to the clerk of the court that issued the writ, to be held to be applied to any judgment that may be recovered in the action, and all other attached property shall be retained by the sheriff to be applied to any judgment that may be recovered in the action. [1987 c 442 § 823; 1886 p 43 § 17; RRS § 663. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.170.]

6.25.240 Subjection of attached property to judgment. If judgment is recovered by the plaintiff, it shall be paid out of any proceeds held by the clerk of the court and out of the property retained by the sheriff if it is sufficient for that purpose as follows:

(1) By applying on the execution issued on said judgment the proceeds of all sales of perishable or other property sold, or so much as shall be necessary to satisfy the judgment.

(2) If any balance remains due, the sheriff shall sell under the execution so much of the personal property attached as may be necessary to satisfy the balance and, if there is not sufficient personal property to satisfy the balance, the sheriff shall sell so much of any real property attached as is necessary to satisfy the judgment.

Notice of sale shall be given and sale conducted as in other cases of sales on execution. [1987 c 442 § 824; 1957 c 51 § 4; 1886 p 44 § 25; RRS § 667. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.210.]

6.25.250 Procedure when attached property insufficient. If, after the proceeds of all the property attached have been applied to the payment of the judgment, any balance remains due, the sheriff shall proceed as upon an execution in other cases. Whenever the judgment has been paid, the sheriff, upon reasonable demand, shall deliver to the defendant the attached property remaining and the clerk shall pay to the defendant any remaining proceeds of the property attached that have not been applied on the judgment. [1987 c 442 § 825; 1957 c 51 § 5; 1886 p 44 § 26; RRS § 668. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.220.]

6.25.260 Procedure where execution unsatisfied. If the execution is returned unsatisfied, in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution. [1987 c 442 § 826; 1886 p 45 § 27; RRS § 669. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.230.]

6.25.270 Procedure when judgment is for defendant. If the defendant recovers judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff and deposited with the clerk and all the property attached and retained by the sheriff shall be delivered to the defendant or the defendant's agent. The order of attachment shall be discharged and the property released therefrom. [1987 c 442 § 827; 1886 p 45 § 28; RRS § 670. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.240.]

6.25.280 Chapter to be liberally construed—Amendments. This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the complaint, affidavit, bond, writ or other proceeding, and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has been or can be amended so as to show that a legal cause for the attachment existed at the time it was issued, and the court shall give the plaintiff a reasonable time to perfect such defective proceedings.

[1987 c 442 § 828; 1886 p 46 § 35; RRS § 677. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.310.]

Chapter 6.26

PREJUDGMENT GARNISHMENT

Sections	
6.26.010	Prejudgment writs of garnishment—Grounds.
6.26.020	Issuance of writ—Bond—Fee.
6.26.030	Action on bond for wrongful garnishment—Damages and attorney's fees.
6.26.040	Action against plaintiff for wrongful garnishment—Damages and attorney's fees.
6.26.050	Application for prejudgment writ of garnishment—Affidavit.
6.26.060	Issuance of writ—Notice—Hearing—Issuance without prior notice—Forms for notice.
6.26.070	Application of chapter 6.27 RCW to prejudgment garnishments.

Rules of court: CR 64 and SPR 91.04W.

6.26.010 Prejudgment writs of garnishment—Grounds. Except as limited by RCW 6.27.040, relating to the state and other public entities, and RCW 6.27.330, relating to continuing liens on earnings, the plaintiff at the time of commencing an action, or at any time thereafter before judgment in an action, may obtain a prejudgment writ of garnishment from a superior or district court of this state before which the action is pending on the following grounds:

(1) If the writ is directed to other than an employer and for a purpose other than garnishing a defendant's earnings as defined in RCW 6.27.010, (a) on the ground that an attachment has been issued in accordance with chapter 6.25 RCW, (b) on the ground that the plaintiff sues on a debt that is due and owing and unpaid, or (c) on one or more of the grounds for issuance of attachment stated in RCW 6.25.030 or 6.25.040; or

(2) If the writ is directed to an employer for the purpose of garnishing earnings of a defendant, on the grounds that the defendant:

- (a) Is not a resident of this state, or is about to move from this state; or
- (b) Has concealed himself or herself, absconded, or absented himself or herself so that ordinary process of law cannot be served on him or her; or
- (c) Has removed or is about to remove any of his or her property from this state, with intent to delay or defraud his or her creditors. [1987 c 442 § 901.]

6.26.020 Issuance of writ—Bond—Fee. In all cases of garnishment before judgment, before the writ shall issue, the plaintiff shall pay the fee described in RCW 6.27.060 and shall execute and file with the clerk a bond with sufficient sureties, to be approved by the clerk of the court issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that the plaintiff will prosecute the suit without delay and pay all damages and costs that may be adjudged against him or her for

wrongfully suing out such garnishment. [1987 c 442 § 902; 1969 ex.s. c 264 § 3. Formerly RCW 7.33.030.]

6.26.030 Action on bond for wrongful garnishment—Damages and attorney's fees. In an action on the bond under RCW 6.26.020, if it is shown that the garnishment was wrongfully sued out, the defendant may recover the actual damages sustained and reasonable attorney's fees to be fixed by the court. If it is shown that such garnishment was sued out maliciously, the defendant may also recover exemplary damages, and the defendant need not wait until the principal suit is determined before suing on the bond by counterclaim in the original action or in a separate action. [1987 c 442 § 903.]

6.26.040 Action against plaintiff for wrongful garnishment—Damages and attorney's fees. In all actions in which a prejudgment writ of garnishment has been issued by a court and served upon a garnishee, in the event judgment is not entered for the plaintiff on the claim sued upon by plaintiff, and the claim has not voluntarily been settled or otherwise satisfied, the defendant shall have an action for damages against the plaintiff. The defendant's action for damages may be brought by way of a counterclaim in the original action or in a separate action and, in the action the trier of fact, in addition to other actual damages sustained by the defendant, may award the defendant reasonable attorney's fees. [1987 c 442 § 904; 1970 ex.s. c 61 § 4; 1969 ex.s. c 264 § 34. Formerly RCW 7.33.340.]

6.26.050 Application for prejudgment writ of garnishment—Affidavit. The plaintiff or someone on the plaintiff's behalf shall apply for a prejudgment writ of garnishment by affidavit, alleging that the garnishment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant and also alleging that the affiant has reason to believe and does believe the following, together with specific facts on which the affiant's belief in the allegations is based: (1) That the defendant is indebted to the plaintiff (specifying the nature of the claim and the amount of such indebtedness over and above all just credits and offsets); (2) that one or more of the grounds for prejudgment garnishment established in RCW 6.26.010 exists; (3) that the plaintiff has reason to believe, and does believe, that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law; (4) whether or not the garnishee is the employer of the defendant; and (5) if the action is based on a debt not due, that nothing but time is wanting to fix an absolute indebtedness due from the defendant. [1987 c 442 § 905.]

6.26.060 Issuance of writ—Notice—Hearing—Issuance without prior notice—Forms for notice. (1) When application is made for a prejudgment writ of garnishment, the court shall issue the writ in substantially the form prescribed in RCW 6.27.070, *7.33.120, and 6.27.100 directing that the garnishee withhold an amount as prescribed in RCW 6.27.090, but, except as provided in subsection (2) of this section, the court shall issue the writ only after prior notice to the defendant, given in the manner prescribed in subsections (4) and (5) of this section, with an opportunity for a prior hearing at which the plaintiff shall establish the probable validity of the plaintiff's claim and that there is probable cause to believe that the alleged ground for garnishment exists.

(2) Subject to subsection (3) of this section, the court shall issue the writ without prior notice to the defendant and without an opportunity for a prior hearing only if:

(a) A ground alleged in the plaintiff's affidavit is: (i) A ground appearing in RCW 6.26.010(2)(c) if the writ is to be directed to an employer for the purpose of garnishing the defendant's earnings; or (ii) a ground appearing in RCW 6.25.030 (5) through (7) or in RCW 6.25.040(1) of the attachment chapter; or (iii) if garnishment is necessary to permit the court to acquire jurisdiction over the action, the ground alleged is one appearing in RCW 6.25.030 (1) through (4) or in RCW 6.26.010(2)(a) or (b); and

(b) The court finds on the basis of specific facts, after an ex parte hearing, that there is probable cause to believe the allegations of the plaintiff's affidavit.

(3) If a writ is issued under subsection (2) of this section without prior notice to the defendant, after service of the writ on the garnishee, the defendant shall be entitled to prompt notice of the garnishment and a right to an early hearing, if requested, at which the plaintiff shall establish the probable validity of the claim sued on and that there is probable cause to believe that the alleged ground for garnishment exists.

(4) When notice and a hearing are required under this section, notice may be given by a show cause order stating the date, time, and place of the hearing. Notice required under this section shall be jurisdictional and, except as provided for published notice in subsection (5) of this section, notice required under this section shall be served in the same manner as a summons in a civil action and shall be served together with (a) copies of plaintiff's affidavit and of the writ, and (b) a copy of the following "Notice of Right to a Hearing" or, if defendant is an individual, a copy of the claim form and the "Notice of Garnishment and of Your Rights" prescribed by RCW 6.27.140, in which the following notice is substituted for the first paragraph of said Notice:

NOTICE OF RIGHT TO HEARING

The writ of garnishment served with this Notice has been issued by a Washington court and has been or will be served on the garnishee defendant. It will require the garnishee defendant to withhold payment of money that may be due to you and to withhold other property of yours that the garnishee

may hold or control until a lawsuit in which you are a defendant has been decided by the court. Service of this notice of your rights is required by law.

YOU HAVE A RIGHT TO A HEARING. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the statements in the enclosed affidavit are true and also that the claim stated in the lawsuit is probably valid, or else the garnishment will be released.

(5) If service of notice on the defendant must be effected by publication, only the following notice need be published under the caption of the case:

To, Defendant:

A writ of prejudgment garnishment has been issued in the above captioned case, directed to ----- as Garnishee Defendant, commanding the Garnishee to withhold amounts due you or to withhold any of your property in the Garnishee's possession or control for application to any judgment that may be entered for plaintiff in the case.

YOU HAVE A RIGHT TO ASK FOR A HEARING. At the hearing, the plaintiff must give evidence that there is probable cause to believe that the ground for garnishment alleged in an affidavit filed with the court exists and also that the claim stated in the lawsuit is probably valid, or else the garnishment will be released.

If the defendant is an individual, the following paragraph shall be added to the published notice:

YOU MAY ALSO HAVE A RIGHT TO HAVE THE GARNISHMENT RELEASED if amounts or property withheld are exempt under federal or state statutes, for example, bank accounts in which benefits such as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Social Security, United States pension, Unemployment Compensation, or Veterans' benefits have been deposited or certain personal property described in section 6.15.010 of the Revised Code of Washington.

[1987 c 442 § 906.]

*Reviser's note: RCW 7.33.120 was repealed by 1987 c 442. Language substantially similar to RCW 7.33.120 has been added as a second paragraph to RCW 6.27.070.

6.26.070 Application of chapter 6.27 RCW to prejudgment garnishments. Except as otherwise provided, the provisions of chapter 6.27 RCW governing garnishments apply to prejudgment garnishments. [1987 c 442 § 907.]

Chapter 6.27 GARNISHMENT

Sections

6.27.010
6.27.020

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6.27.360	Continuing lien on earnings—Priorities.

Rules of court: CR 64 and SPR 91.04W.

6.27.010 Definitions. (1) As used in this chapter, the term "earnings" means compensation paid or payable to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(2) As used in this chapter, the term "disposable earnings" means that part of earnings remaining after the deduction from those earnings of any amounts required by law to be withheld. [1987 c 442 § 1001.]

6.27.020 Grounds for issuance of writ—Time of issuance of prejudgment writs. (1) The clerks of the superior courts and district courts of this state may issue

writs of garnishment returnable to their respective courts for the benefit of a judgment creditor who has a judgment wholly or partially unsatisfied in the court from which the garnishment is sought.

(2) Except as otherwise provided in RCW 6.27.040 and 6.27.330, the superior courts and district courts of this state may issue prejudgment writs of garnishment to a plaintiff at the time of commencement of an action or at any time afterward, subject to the requirements of chapter 6.26 RCW. [1987 c 442 § 1002; 1969 ex.s. c 264 § 1. Formerly RCW 7.33.010.]

Rules of court: Cf. CR 64.

6.27.030 Application of chapter to district courts. All the provisions of this chapter shall apply to proceedings before district courts of this state. [1987 c 442 § 1003; 1969 ex.s. c 264 § 2. Formerly RCW 7.33.020.]

Rules of court: Cf. SPR 91.04W.

6.27.040 State and municipal corporations subject to garnishment—Service of writ. The state of Washington, all counties, cities, towns, school districts and other municipal corporations shall be subject to garnishment after judgment has been entered in the principal action, but not before, in the superior and district courts, in the same manner and with the same effect, as provided in the case of other garnishees.

The venue of any such garnishment proceeding shall be the same as for the original action, and the writ shall be issued by the clerk of the court having jurisdiction of such original action.

The writ of garnishment shall be served in the same manner and upon the same officer as is required for service of summons upon the commencement of a civil action against the state, county, city, town, school district, or other municipal corporation, as the case may be. [1987 c 442 § 1004; 1987 c 202 § 134; 1969 ex.s. c 264 § 6. Formerly RCW 7.33.060.]

Reviser's note: This section, previously codified as RCW 7.33.060, was amended by 1987 c 202 § 134 and by 1987 c 442 § 1004, each without reference to the other. Chapter 442 also directed that RCW 7.33.060 be recodified. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1987 c 202: See note following RCW 2.04.190.

6.27.050 Garnishment of money held by officer—Of judgment debtor—Of personal representative. A sheriff or other peace officer who holds money of the defendant is subject to garnishment, excepting only for money or property taken from a person arrested by such officer, at the time of the arrest. A judgment debtor of the defendant is subject to garnishment when the judgment has not been previously assigned on the record or by writing filed in the office of the clerk of the court that entered the judgment and minuted by the clerk as an assignment in the execution docket. An executor or administrator is subject to garnishment for money due from the decedent to the defendant. [1987 c 442 § 1005; 1927 c 101 § 1; 1886 p 43 § 19; RRS § 664. Prior: Code 1881 §§ 174–192; 1877 pp 35–40; 1873 pp 43–50; 1871

pp 9, 10; 1869 pp 41–47; 1863 pp 112–120; 1860 pp 30–36; 1854 pp 155–162. Formerly RCW 7.12.180.]

6.27.060 Application for writ—Affidavit—Fee (as amended by 1987 c 202). Before the issuance of the writ of garnishment the plaintiff or someone in ((his)) the plaintiff's behalf shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, including the amount alleged to be due, and that the plaintiff has reason to believe, and does believe, (a) that the garnishee, stating ((his)) the garnishee's name and residence, is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or (b) that ((he)) the garnishee has in his or her possession, or under his or her control, personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law, and shall pay to the clerk of the superior court the fee provided by RCW 36.18.020, or to the clerk of the ((justice)) district court the fee of two dollars. The party applying for this writ shall state in such affidavit whether or not the party who is to be the garnishee is the employer of the defendant. [1987 c 202 § 133; 1981 c 193 § 3; 1977 ex.s. c 55 § 1; 1969 ex.s. c 264 § 4. Formerly RCW 7.33.040.]

Intent—1987 c 202: See note following RCW 2.04.190.

6.27.060 Application for writ—Affidavit—Fee (as amended by 1987 c 442). ~~((Before the issuance of the writ of garnishment)) The judgment creditor as the plaintiff or someone in ((his)) the judgment creditor's behalf shall ((make application therefor)) apply for a writ of garnishment by affidavit, stating the following facts ((authorizing the issuance of the writ, including)): (1) The plaintiff has a judgment wholly or partially unsatisfied in the court from which the writ is sought; (2) the amount alleged to be due((and that)) under that judgment; (3) the plaintiff has reason to believe, and does believe((; (a))) that the garnishee, stating ((his)) the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or ((b)) that ((he)) the garnishee has ((in his)) possession((;)) or ((under his)) control((;)) of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law((;)) and (4) whether or not the garnishee is the employer of the judgment debtor.~~

~~The judgment creditor shall pay to the clerk of the superior court the fee provided by RCW 36.18.020, or to the clerk of the ((justice)) district court the fee of two dollars. ((The party applying for this writ shall state in such affidavit whether or not the party who is to be the garnishee is the employer of the defendant.)) [1987 c 442 § 1006; 1981 c 193 § 3; 1977 ex.s. c 55 § 1; 1969 ex.s. c 264 § 4. Formerly RCW 7.33.040.]~~

Reviser's note: This section, previously codified as RCW 7.33.040, was amended during the 1987 legislative session by 1987 c 202 and 1987 c 442, each without reference to the other. Chapter 442 also directed that RCW 7.33.040 be recodified.

For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

6.27.070 Issuance of writ—Form—Dating—Attestation. When application for a writ of garnishment is made by a judgment creditor and the requirements of RCW 6.27.060 have been complied with, the clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor in the form prescribed in RCW 6.27.100, directed to the garnishee, commanding the garnishee to answer said writ on forms served with the writ and complying with RCW 6.27.190 within twenty days after the service of the writ upon the garnishee.

The writ of garnishment shall be dated and attested as in the form prescribed in RCW 6.27.100. The name and office address of the plaintiff's attorney shall be indorsed

thereon or, in case the plaintiff has no attorney, the name and address of the plaintiff shall be indorsed thereon. The address of the clerk's office shall appear at the bottom of the writ. [1987 c 442 § 1007; 1970 ex.s. c 61 § 1. Prior: 1969 ex.s. c 264 § 5. Formerly RCW 7.33.050.]

6.27.080 Writ directed to financial institution—
Form and service. A writ of garnishment directed to a bank, banking association, mutual savings bank, savings and loan association, or credit union that maintains branch offices may identify a particular branch or the financial institution as the garnishee defendant, and the statement required by RCW 6.27.110(2) may be incorporated in the writ or served separately. Service shall be as required by RCW 6.27.110 except that, if the financial institution is named as garnishee defendant, service shall be on the head office or on any other office designated by the financial institution for receipt of service of process. If the branch is named as garnishee defendant, service shall be as required by RCW 6.27.110 and shall be effective only to attach the accounts, credits, or other personal property of the defendant in the particular branch to which the writ is directed and on which service is made. [1987 c 442 § 1008.]

6.27.090 Amount garnishee required to hold. The writ of garnishment shall set forth in the first paragraph the amount that garnishee is required to hold, which shall be an amount determined as follows: (1) The amount of the judgment remaining unsatisfied or if before judgment, the amount prayed for in the complaint; (2) plus interest to the date of garnishment, as provided in RCW 4.56.110; (3) plus whichever shall be greater of (a) fifty dollars, (b) statutory costs, or (c) ten percent of (i) the amount of the judgment remaining unsatisfied or (ii) the amount prayed for in the complaint. The court may, by order, set a higher amount to be held upon a showing of good cause by plaintiff. [1987 c 442 § 1009; 1969 ex.s. c 264 § 9. Formerly RCW 7.33.090.]

6.27.100 Form of writ. The writ shall be substantially in the following form: *Provided*, That if the writ is issued under a court order or judgment for child support, the following statement shall appear conspicuously in the caption: "This garnishment is based on a judgment or court order for child support": *And provided further*, That if the garnishment is for a continuing lien, the form shall be modified as provided in RCW 6.27.340:

"IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF -----
-----,
Plaintiff, No. -----
vs.
-----,
Defendant WRIT OF
GARNISHMENT
-----,
Garnishee Defendant

THE STATE OF WASHINGTON TO: -----
Garnishee
Defendant
AND TO: -----
Defendant

The above-named plaintiff has applied for a writ of garnishment against you, claiming that the above-named defendant is indebted to plaintiff and that the amount to be held to satisfy that indebtedness is \$ -----, consisting of:

Balance on Judgment or Amount of Claim	\$	-----
Interest under Judgment from ----- to -----	\$	-----
Allowed Costs and Attorneys' Fees	\$	-----
Estimated Garnishment Costs:		
Service Fees	\$	-----
Certified Mail	\$	-----
Attorney's Fee	\$	50.00
Answer Fee or Fees	\$	-----
Other	\$	-----

YOU ARE HEREBY COMMANDED, unless otherwise directed by the court or by this writ, not to pay any debt, whether wages subject to this garnishment or any other debt, owed to the defendant at the time this writ was served and not to deliver, sell, or transfer, or recognize any sale or transfer of, any personal property or effects of the defendant in your possession or control at the time when this writ was served. Any such payment, delivery, sale, or transfer is void to the extent necessary to satisfy the plaintiff's claim and costs for this writ with interest.

YOU ARE FURTHER COMMANDED to answer this writ by filling in the attached form according to the instructions in this writ and in the answer forms and, within twenty days after the service of the writ upon you, to mail or deliver the original of such answer to the court, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant, in the envelopes provided.

If, at the time this writ was served, you owed the defendant any wages, salary, commission, bonus, or other compensation for personal services or any periodic payments pursuant to a pension or retirement program, the defendant is entitled to receive amounts that are exempt from garnishment under federal and state law. You must pay the exempt amounts to the defendant on the day you would customarily pay the compensation or other periodic payment. As more fully explained in the answer, the basic exempt amount is the greater of seventy-five percent of disposable earnings or \$ ----- for each week of compensation or other periodic payment due, to be calculated as provided in the answer. However, if this writ carries a statement in the heading that "This garnishment is based on a judgment or court order for child support," the basic exempt amount is forty percent of disposable earnings.

If you owe the defendant a debt payable in money in excess of the amount set forth in the first paragraph of this writ, hold only the amount set forth in the first

paragraph and release all additional funds or property to defendant.

YOUR FAILURE TO ANSWER THIS WRIT AS COMMANDED WILL RESULT IN A JUDGMENT BEING ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTERESTS AND COSTS WHETHER OR NOT YOU OWE ANYTHING TO THE DEFENDANT.

Witness, the Honorable _____, Judge of the Superior Court, and the seal thereof, this ____ day of _____, 19__.

[Seal]

----- Attorney for Plaintiff (or Plaintiff, if no attorney) -----	----- Clerk of Superior Court -----
----- Address -----	----- By ----- Address -----

[1987 c 442 § 1010; 1981 c 193 § 4; 1969 ex.s. c 264 § 11. Formerly RCW 7.33.110.]

6.27.110 Service of writ generally—Forms—Requirements for financial institution—Return.

(1) Service of the writ of garnishment on the garnishee is invalid unless the writ is served together with: (a) Four answer forms as prescribed in RCW 6.27.190; (b) three stamped envelopes addressed respectively to the clerk of the court issuing the writ, the attorney for the plaintiff (or to the plaintiff if the plaintiff has no attorney), and the defendant; and (c) cash or a check made payable to the garnishee in the amount of ten dollars.

(2) The writ of garnishment shall be mailed to the garnishee by certified mail, return receipt requested, addressed in the same manner as a summons in a civil action, and will be binding upon the garnishee on the day set forth on the return receipt. In the alternative, the writ shall be served by the sheriff of the county in which the garnishee lives or has its place of business or by any person qualified to serve process in the same manner as a summons in a civil action is served: *Provided, however,* That a writ directed to a bank, banking association, mutual savings bank or savings and loan association maintaining branch offices, as garnishee, shall be served by mail directed to, or by service on, the manager or other officer or cashier or assistant cashier of such bank or association at its office or branch that allegedly carries an account for defendant or allegedly holds or controls property belonging to the defendant and, in addition, there shall be served with the writ, as part of the service, a statement in writing signed by the plaintiff or plaintiff's attorney, stating (a) the defendant's place of residence and business, occupation, trade, or profession, or (b) the defendant's account number, if such information is not incorporated in the writ. If the statement is not

served with the writ and such information is not included in the writ, the service shall be deemed incomplete and the garnishee shall not be held liable for funds owing to the defendant that it fails to discover.

(3) If a writ of garnishment is served by a sheriff, the sheriff shall file with the clerk of the court that issued the writ a signed return showing the time, place, and manner of service and that the writ was accompanied by answer forms, addressed envelopes, and cash or a check as required by this section, and noting thereon fees for making the service. If service is made by any person other than a sheriff, such person shall file a signed return including the same information and shall also attach to the return an affidavit showing qualifications to make such service. If a writ of garnishment is served by mail, the person making the mailing shall file a signed return showing the time, place, and manner of mailing and that the writ was accompanied by answer forms, addressed envelopes, and cash or a check as required by this section and shall attach to the return a copy of the return receipt. [1987 c 442 § 1011; 1981 c 193 § 5; 1971 ex.s. c 292 § 8; 1970 ex.s. c 61 § 11; 1969 ex.s. c 264 § 13. Formerly RCW 7.33.130.]

Rules of court: Cf. SPR 91.04W(a), (b), and (e).

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

6.27.120 Effect of service of writ. (1) From and after the service of a writ of garnishment, it shall not be lawful, except as provided in this chapter or as directed by the court, for the garnishee to pay any debt owing to the defendant at the time of such service, or to deliver, sell or transfer, or recognize any sale or transfer of, any personal property or effects belonging to the defendant in the garnishee's possession or under the garnishee's control at the time of such service; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, personal property or effects as may be necessary to satisfy the plaintiff's demand.

(2) This section shall have no effect as to any portion of a debt that is exempt from garnishment.

(3) The garnishee shall incur no liability for releasing funds or property in excess of the amount stated in the writ of garnishment if the garnishee continues to hold an amount equal to the amount stated in the writ of garnishment. [1987 c 442 § 1012; 1969 ex.s. c 264 § 14. Formerly RCW 7.33.140.]

6.27.130 Mailing of writ and judgment or affidavit to judgment debtor—Mailing of notice and claim form if judgment debtor is an individual—Service—Return.

(1) When a writ is issued under a judgment, on or before the date of service of the writ on the garnishee, the judgment creditor shall mail or cause to be mailed to the judgment debtor, by certified mail, addressed to the last known post office of the judgment debtor, (a) a copy of the writ and a copy of the judgment or, if it is a district court judgment, a copy of the judgment creditor's affidavit submitted in application for the writ, and (b) if the judgment debtor is an individual, the notice and claim

form prescribed in RCW 6.27.140. In the alternative, on or before the day of the service of the writ on the garnishee or within two days thereafter, the stated documents shall be served on the judgment debtor in the same manner as is required for personal service of summons upon a party to an action.

(2) The requirements of this section shall not be jurisdictional, but (a) no disbursement order or judgment against the garnishee defendant shall be entered unless there is on file the return of service or mailing required by subsection (3) of this section, and (b) if the copies of the writ and judgment or affidavit, and the notice and claim form if the defendant is an individual, are not mailed or served as herein provided, or if any irregularity appears with respect to the mailing or service, the court, in its discretion, on motion of the judgment debtor promptly made and supported by affidavit showing that the judgment debtor has suffered substantial injury from the plaintiff's failure to mail or otherwise to serve such copies, may set aside the garnishment and award to the judgment debtor an amount equal to the damages suffered because of such failure.

(3) If the service on the judgment debtor is made by a sheriff, the sheriff shall file with the clerk of the court that issued the writ a signed return showing the time, place, and manner of service and that the copy of the writ was accompanied by a copy of a judgment or affidavit, and by a notice and claim form if required by this section, and shall note thereon fees for making such service. If service is made by any person other than a sheriff, such person shall file a signed return including the same information and shall also attach to the return an affidavit showing qualifications to make such service. If service on the judgment debtor is made by mail, the person making the mailing shall file a signed return including the same information as required for return on service and, in addition, showing the address of the mailing and attaching the return receipt or the mailing should it be returned to the sender as undeliverable. [1987 c 442 § 1013; 1969 ex.s. c 264 § 32. Formerly RCW 7.33.320.]

6.27.140 Form of returns under RCW 6.27.130. (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 by 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 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 Aid to Families with Dependent Children (AFDC), 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 up to five hundred dollars of property of your choice (including up to one hundred dollars in cash or in a bank account) and certain 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.
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:
- [] AFDC, 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 or a wife.

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, name of husband/wife
Your signature	Signature of husband or wife
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.

[1987 c 442 § 1014.]

6.27.150 Exemption of earnings—Amount. (1) Except as provided in subsection (2) of this section, if the garnishee is an employer owing the defendant earnings, then for each week of such earnings, an amount shall be exempt from garnishment which is the greatest of the following:

(a) Thirty times the federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 of the United States Code in effect at the time the earnings are payable; or

(b) Seventy-five percent of the disposable earnings of the defendant.

(2) In the case of a garnishment based on a judgment or other court order for child support, other than a mandatory wage assignment order, the exemption shall be fifty percent of the disposable earnings of the defendant if the individual is supporting a spouse or dependent

child (other than a spouse or child on whose behalf the garnishment is brought), or forty percent of the disposable earnings of the defendant if the individual is not supporting such a spouse or dependent child.

(3) The exemptions stated in this section shall apply whether such earnings are paid, or are to be paid, weekly, monthly, or at other intervals, and whether earnings are due the defendant for one week, a portion thereof, or for a longer period.

(4) Unless directed otherwise by the court, the garnishee shall determine and deduct exempt amounts under this section as directed in the writ of garnishment and answer, and shall pay these amounts to the defendant.

(5) No money due or earned as earnings as defined in RCW 6.27.010 shall be exempt from garnishment under the provisions of RCW 6.15.010, as now or hereafter amended. [1987 c 442 § 1015; 1981 c 193 § 6; 1971 c 6 § 1; 1970 ex.s. c 61 § 3; 1969 ex.s. c 264 § 28. Formerly RCW 7.33.280.]

6.27.160 Claiming exemptions—Form—Hearing—Attorney's fees—Costs—Release of funds or property. (1) A defendant may claim exemptions from garnishment in the manner specified by the statute that creates the exemption or by delivering to or mailing by first class mail to the clerk of the court out of which the writ was issued a declaration in substantially the following form or in the form set forth in RCW 6.27.140 and mailing a copy of the form by first class mail to the plaintiff or plaintiff's attorney at the address shown on the writ of garnishment, all not later than twenty-eight days after the date stated on the writ.

[NAME OF COURT]

No. -----

Plaintiff

Defendant

CLAIM OF EXEMPTION

Garnishee

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

I/We believe the property is exempt because:

Print name

Print name of spouse,
if married

Signature

Signature

Address

Address

Telephone number

Telephone number

(2) A plaintiff who wishes to object to an exemption claim must, not later than seven days after receipt of the claim, cause to be mailed to the defendant by first class mail, to the address shown on the exemption claim, a declaration by self, attorney, or agent, alleging the facts on which the objection is based, together with notice of date, time, and place of a hearing on the objection, which hearing the plaintiff must cause to be noted for a hearing date not later than fourteen days after the receipt of the claim. After a hearing on an objection to an exemption claim, the court shall award costs to the prevailing party and may also award an attorney's fee to the prevailing party if the court concludes that the exemption claim or the objection to the claim was not made in good faith.

(3) If the plaintiff elects not to object to the claim of exemption, the plaintiff shall, not later than ten days after receipt of the claim, obtain from the court and deliver to the garnishee an order directing the garnishee to release such part of the debt, property, or effects as is covered by the exemption claim. If the plaintiff fails to obtain and deliver the order as required or otherwise to effect release of the exempt funds or property, the defendant shall be entitled to recover fifty dollars from the plaintiff, in addition to actual damages suffered by the defendant from the failure to release the exempt property. [1987 c 442 § 1016.]

6.27.170 Garnished employee not to be discharged—Exception. No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to a writ of garnishment directed to the employer: *Provided, however,* That this provision shall not apply if garnishments on three or more separate indebtednesses are served upon the employer within any period of twelve consecutive months. [1987 c 442 § 1017; 1969 ex.s. c 264 § 16. Formerly RCW 7.33.160.]

6.27.175 Employee separated from employment due to wage garnishment not disqualified for unemployment compensation. See RCW 50.20.045.

6.27.180 Bond to discharge writ. If the defendant in the principal action causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the writ of garnishment, or after the return of said writ, by the clerk of the court out of which the writ was issued, conditioned that the defendant will

perform the judgment of the court, the writ of garnishment shall, upon the filing of said bond with the clerk, be immediately discharged, and all proceedings under the writ shall be vacated: *Provided*, That the garnishee shall not be thereby deprived from recovering any costs in said proceeding, to which the garnishee would otherwise be entitled under this chapter. The bond shall be part of the record and, if judgment is against the defendant, it shall be entered against defendant and the sureties. [1987 c 442 § 1018; 1969 ex.s. c 264 § 17. Formerly RCW 7.33.170.]

6.27.190 Answer of garnishee—Contents—Forms. The answer of the garnishee shall be signed by the garnishee or attorney or if the garnishee is a corporation, by an officer, attorney or duly authorized agent of the garnishee, under penalty of perjury, and the original delivered, either personally or by mail, to the clerk of the court that issued the writ, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant. The answer shall be made on a form substantially as appears in this section, served on the garnishee with the writ, with exempt amounts for relevant pay periods filled in by the plaintiff before service of the answer forms, except that, if the garnishment is for a continuing lien, the answer form shall be as prescribed in RCW 6.27.340.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

NO. -----

Plaintiff
vs.

Defendant

Garnishee Defendant

ANSWER
TO WRIT OF
GARNISHMENT

At the time of service of the writ of garnishment on the garnishee there was due and owing from the garnishee to the above-named defendant \$..... (On the reverse side of this answer form, or on an attached page, give an explanation of the dollar amount stated, or give reasons why there is uncertainty about your answer.)

If the above amount or any part of it is for personal earnings (that is, compensation payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and including periodic payments pursuant to a pension or retirement program): Garnishee has deducted from this amount \$..... which is the exemption to which the defendant is entitled, leaving \$..... that garnishee holds under the writ. The exempt amount is calculated as follows:

Total compensation due defendant \$-----
LESS deductions for social security and
withholding taxes and any other
deduction required by law \$-----
(list separately and identify) \$-----
Disposable wages \$-----

If the title of this writ indicates that this is a garnishment under a child support judgment, enter forty percent of disposable wages: \$----- . This amount is exempt and must be paid to the defendant at the regular pay time.

If this is not a garnishment for child support, enter seventy-five percent of disposable wages: \$----- . From the listing in the following paragraph, choose the amount for the relevant pay period and enter that amount: \$----- . (If amounts for more than one pay period are due, multiply the preceding amount by the number of pay periods and/or fraction of pay period for which amounts are due and enter that amount: \$----- .) The greater of the amounts entered in this paragraph is the exempt amount and must be paid to the defendant at the regular pay time.

Amounts for different pay periods: Weekly \$-----; Biweekly \$-----; Semimonthly \$-----; Monthly \$-----

List all of the personal property or effects of defendant in the garnishee's possession or control when the writ was served. (Use the reverse side of this answer form or attach a schedule if necessary.)

An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanying schedules, and to the best of my knowledge and belief it is true, correct, and complete.

Signature of Garnishee Defendant Date

Signature of person answering for garnishee Connection with garnishee

Address of Garnishee

[1987 c 442 § 1019; 1969 ex.s. c 264 § 15. Formerly RCW 7.33.150.]

Rules of court: Cf. SPR 91.04W(c).

6.27.200 Default judgment—Reduction upon motion of garnishee—Attorney's fee. If the garnishee fails to answer the writ within the time prescribed in the writ, after the time to answer the writ has expired and after required returns have been filed, showing service on the garnishee and service on or mailing to the defendant, it shall be lawful for the court to render judgment by default against such garnishee, in accordance with rules relating to entry of default judgments, for the full amount claimed by the plaintiff against the defendant, or in case the plaintiff has a judgment against the defendant, for the full amount of the plaintiff's unpaid judgment against the defendant with all accruing interest and costs as prescribed in RCW 6.27.090: *Provided*, That upon motion by the garnishee at any time prior to issuance of a writ of execution under such judgment, the

judgment against the garnishee shall be reduced to the amount of any nonexempt funds or property which was actually in the possession of the garnishee at the time the writ was served, plus the cumulative amount of the nonexempt earnings subject to the lien provided for in RCW 6.27.350, or the sum of one hundred dollars, whichever is more, but in no event to exceed the full amount claimed by the plaintiff or the amount of the unpaid judgment against the principal defendant plus all accruing interest and costs and attorney's fees as prescribed in RCW 6.27.090, and in addition the plaintiff shall be entitled to a reasonable attorney's fee for the plaintiff's response to the garnishee's motion to reduce said judgment against the garnishee under this proviso and the court may allow additional attorney's fees for other actions taken because of the garnishee's failure to answer. [1987 c 442 § 1020; 1970 ex.s. c 61 § 10; 1969 ex.s. c 264 § 19. Formerly RCW 7.33.190.]

Rules of court: CR 55, JCR 55.

6.27.210 Answer of garnishee may be controverted by plaintiff or defendant. If the garnishee files an answer, either the plaintiff or the defendant, if not satisfied with the answer of the garnishee, may controvert within twenty days after the filing of the answer, by filing an affidavit in writing signed by the controverting party or attorney or agent, stating that the affiant has good reason to believe and does believe that the answer of the garnishee is incorrect, stating in what particulars the affiant believes the same is incorrect. Copies of the affidavit shall be served on or mailed by first class mail to the garnishee at the address indicated on the answer or, if no address is indicated, at the address to or at which the writ was mailed or served, and to the other party, at the address shown on the writ if the defendant controverts, or at the address to or at which the copy of the writ of garnishment was mailed or served on the defendant if the plaintiff controverts, unless otherwise directed in writing by the defendant or defendant's attorney. [1987 c 442 § 1021; 1969 ex.s. c 264 § 24. Formerly RCW 7.33.240.]

6.27.220 Controversion—Procedure. If the answer of the garnishee is controverted, as provided in RCW 6.27.210, the garnishee may respond by affidavit of the garnishee, the garnishee's attorney or agent, within twenty days of the filing of the controverting affidavit, with copies served on or mailed by first class mail to the plaintiff at the address shown on the writ and to the defendant as provided in RCW 6.27.210. Upon the expiration of the time for garnishee's response, the matter may be noted by any party for hearing before a commissioner or presiding judge for a determination whether an issue is presented that requires a trial. If a trial is required, it shall be noted as in other cases, but no pleadings shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the reply of the plaintiff or defendant controverting such answer, unless otherwise ordered by the court. [1987 c 442 § 1022; 1969 ex.s. c 264 § 26. Formerly RCW 7.33.260.]

6.27.230 Controversion—Costs and attorney's fees. Where the answer is controverted, the costs of the proceeding, including a reasonable compensation for attorney's fees, shall be awarded to the prevailing party: *Provided*, That no costs or attorney's fees in such contest shall be taxable to the defendant in the event of a controversion by the plaintiff. [1987 c 442 § 1023; 1969 ex.s. c 264 § 29. Formerly RCW 7.33.290.]

6.27.240 Discharge of garnishee. If it appears from the answer of the garnishee that the garnishee was not indebted to the defendant when the writ of garnishment was served, and that the garnishee did not have possession or control of any personal property or effects of the defendant, and if an affidavit controverting the answer of the garnishee is not filed within twenty days of the filing of the answer, as provided in this chapter, the garnishee shall stand discharged without further action by the court or the garnishee and shall have no further liability. [1987 c 442 § 1024; 1969 ex.s. c 264 § 18. Formerly RCW 7.33.180.]

6.27.250 Judgment against garnishee—Procedure if debt not mature. (1) If it appears from the answer of the garnishee or if it is otherwise made to appear that the garnishee was indebted to the defendant in any amount, not exempt, when the writ of garnishment was served, and if the required return showing service on or mailing to the defendant is on file, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount exceeds the amount of the plaintiff's claim or judgment against the defendant with accruing interest and costs and attorney's fees as prescribed in RCW 6.27.090, in which case it shall be for the amount of such claim or judgment, with said interest, costs, and fees.

(2) If it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the hearing or trial on controversion or by stipulation of the parties that the garnishee is indebted to the principal defendant in any sum, but that such indebtedness is not matured and is not due and payable, and if the required return showing service on or mailing to the defendant is on file, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, the date when such payment is to be made to be specified in the order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found due. In case the garnishee pays the sum at the time specified in the order, the payment shall operate as a discharge, otherwise judgment shall be entered against the garnishee for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in the same manner as other judgments entered against garnishees as provided in this chapter: *Provided*, That if judgment is rendered in favor of the principal defendant, or if any judgment rendered against the principal defendant is satisfied prior to the date of payment specified in an order of payment entered under

this subsection, the garnishee shall not be required to make the payment, nor shall any judgment in such case be entered against the garnishee. [1987 c 442 § 1025; 1969 ex.s. c 264 § 20. Formerly RCW 7.33.200.]

Rules of court: Cf. SPR 91.04W(d).

6.27.260 Execution on judgment against garnishee. Execution may be issued on the judgment against the garnishee in the same manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing it to the clerk of the court from which the execution was issued; and, in cases where judgment has been rendered against the defendant, the amount made on the execution shall be applied to the satisfaction of the judgment, interest and costs against the defendant. In case judgment has not been rendered against the defendant at the time execution issued against the garnishee is returned, any amount made on the execution shall be paid to the clerk of the court from which the execution issued, who shall retain the same until judgment is rendered in the action between the plaintiff and defendant. In case judgment is rendered in favor of the plaintiff, the amount made on the execution against the garnishee shall be applied to the satisfaction of such judgment and the surplus, if any, shall be paid to the defendant. In case judgment is rendered in favor of the defendant, the amount made on the execution against the garnishee shall be paid to the defendant. [1987 c 442 § 1026; 1969 ex.s. c 264 § 21. Formerly RCW 7.33.210.]

6.27.270 Decree directing garnishee to deliver up effects—Disposition. If it appears from the garnishee's answer or otherwise that the garnishee had possession or control, when the writ was served, of any personal property or effects of the defendant liable to execution, and if the required return showing service on or mailing to the defendant is on file, the court shall render a decree requiring the garnishee to deliver up to the sheriff on demand, and after making arrangements with the sheriff as to time and place of delivery, such personal property or effects or so much of them as may be necessary to satisfy the plaintiff's claim. If a judgment has been rendered in favor of the plaintiff against the defendant, such personal property or effects may be sold in the same manner as any other property is sold upon an execution issued on said judgment. If judgment has not been rendered in the principal action, the sheriff shall retain possession of the personal property or effects until the rendition of judgment therein, and, if judgment is thereafter rendered in favor of the plaintiff, said personal property or effects, or sufficient of them to satisfy such judgment, may be sold in the same manner as other property is sold on execution, by virtue of an execution issued on the judgment in the principal action. If judgment is rendered in the action against the plaintiff and in favor of the defendant, such effects and personal property shall be returned to the defendant by the sheriff: *Provided, however,* That if such effects or personal property are of a perishable nature, or the interests of

the parties will be subserved by making a sale thereof before judgment, the court may order a sale thereof by the sheriff in the same manner as sales upon execution are made, and the proceeds of such sale shall be paid to the clerk of the court that issued the writ, and the same disposition shall be made of the proceeds at the termination of the action as would have been made of the personal property or effects under the provisions of this section in case the sale had not been made. [1987 c 442 § 1027; 1969 ex.s. c 264 § 22. Formerly RCW 7.33.220.]

6.27.280 Procedure upon failure of garnishee to deliver. If the garnishee, adjudged to have effects or personal property of the defendant in possession or under control as provided in RCW 6.27.270, fails or refuses to deliver them to the sheriff on such demand, the officer shall immediately make return of such failure or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause why he or she should not be found in contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal, he or she shall be fined for such contempt and imprisoned until he or she shall deliver such personal property or effects. [1987 c 442 § 1028; 1969 ex.s. c 264 § 23. Formerly RCW 7.33.230.]

6.27.290 Similarity of names—Procedure. (1) If the garnishee in the answer states that the garnishee at the time of the service of the writ was indebted to or had possession or control of personal property or effects belonging to a person with a name the same as or similar to the name of the defendant, and stating the place of business or residence of said person, and that the garnishee does not know whether or not such person is the same person as the defendant, and prays the court to determine whether or not the person is the same person as the defendant, the court, before rendering judgment against the garnishee defendant as hereinbefore provided, shall conduct a hearing to take proof as to the identity of said persons.

(2) Before the hearing on the question of identity, the plaintiff shall cause the court to issue a citation directed to the person identified in the garnishee's answer, commanding that person to appear before the court from which the citation is issued within ten days after the service of the same, and to answer on oath whether or not he or she is the same person as the defendant in said action. The citation shall be dated and attested in the same manner as a writ of garnishment and be delivered to the plaintiff or the plaintiff's attorney and shall be served in the same manner as a summons in a civil action is served.

(3) If the court finds after hearing that the persons are not the same, the garnishee shall be discharged and shall recover costs against the plaintiff. If the court finds that the persons are the same, it shall make the same kind of judgment as in other cases in which the garnishee is held upon the garnishee's answer, including provision for garnishee's costs.

(4) If the court finds after the hearing that the defendant or judgment debtor is the same person as the person identified in the garnishee's answer, it shall be sufficient answer to any claim of said person against the garnishee founded on any indebtedness of the garnishee or on the possession or control by the garnishee of any personal property or effects for the garnishee to show that the indebtedness was paid or the personal property or effects were delivered under the judgment of the court in accordance with the provisions in this chapter. [1987 c 442 § 1029; 1969 ex.s. c 264 § 33. Formerly RCW 7.33.330.]

6.27.300 Garnishee protected against claim of defendant. It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of the garnishee or on the possession or control by the garnishee of any personal property or effects, for the garnishee to show that such indebtedness was paid or such personal property or effects were delivered under the judgment of the court in accordance with this chapter. [1987 c 442 § 1030; 1969 ex.s. c 264 § 30. Formerly RCW 7.33.300.]

6.27.310 Dismissal of writ after one year—Notice—Exception. In all cases where it shall appear from the answer of the garnishee that the garnishee was indebted to the defendant when the writ of garnishment was served, no controversy is pending, there has been no discharge or judgment against the garnishee entered, and one year has passed since the filing of the answer of the garnishee, the court, after ten days' notice in writing to the plaintiff, shall enter an order dismissing the writ of garnishment and discharging the garnishee: *Provided*, That this provision shall have no effect if the cause of action between plaintiff and defendant is pending on the trial calendar, or if any party files an affidavit that the action is still pending. [1987 c 442 § 1031; 1969 ex.s. c 264 § 27. Formerly RCW 7.33.270.]

6.27.320 Dismissal of garnishment upon satisfaction of judgment from other source—Duty of plaintiff—Procedure—Penalty—Costs. In any case where garnishee has answered that it is holding funds or property belonging to defendant and plaintiff shall obtain satisfaction of his judgment from a source other than the garnishment, upon written demand of the defendant or the garnishee, it shall be the duty of plaintiff to obtain an order dismissing the garnishment and to serve it upon the garnishee within twenty days after demand or satisfaction of judgment, whichever shall be later. In the event of the failure of plaintiff to obtain and serve such an order, if garnishee continues to hold such funds or property, defendant shall be entitled to move for dismissal of the garnishment and shall further be entitled to a judgment against plaintiff of one hundred dollars plus defendant's costs and damages. Dismissal may be on ex parte motion of the plaintiff. [1969 ex.s. c 264 § 31. Formerly RCW 7.33.310.]

6.27.330 Continuing lien on earnings—Authorized. A judgment creditor may obtain a continuing lien on earnings by a garnishment pursuant to RCW 6.27.340, 6.27.350, 6.27.360, and *7.33.390. [1987 c 442 § 1032; 1970 ex.s. c 61 § 5. Formerly RCW 7.33.350.]

*Reviser's note: RCW 7.33.390 was repealed by 1987 c 442. Language substantially similar to RCW 7.33.390 was added to RCW 6.27.350.

6.27.340 Continuing lien on earnings—Captions—Additions to writ and answer forms. (1) Service of a writ for a continuing lien shall comply fully with RCW 6.27.110.

(2) The caption of the writ shall be marked "CONTINUING LIEN ON EARNINGS" and the following additional paragraph shall be included in the writ form prescribed in RCW 6.27.100:

"THIS IS A WRIT FOR A CONTINUING LIEN. THE GARNISHEE SHALL HOLD the nonexempt portion of the defendant's earnings due at the time of service of this writ and shall also hold the defendant's nonexempt earnings that accrue through the last payroll period ending on or before SIXTY days after the date of service of this writ. HOWEVER, IF THE GARNISHEE IS PRESENTLY HOLDING THE NONEXEMPT PORTION OF THE DEFENDANT'S EARNINGS UNDER A PREVIOUSLY SERVED WRIT FOR A CONTINUING LIEN, THE GARNISHEE SHALL HOLD UNDER THIS WRIT only the defendant's nonexempt earnings that accrue from the date the previously served writ or writs terminate and through the last payroll period ending on or before sixty days after the date of termination of the previous writ or writs. IN EITHER CASE, THE GARNISHEE SHALL STOP WITHHOLDING WHEN THE SUM WITHHELD EQUALS THE AMOUNT STATED IN THIS WRIT OF GARNISHMENT."

(3) The answer forms served on an employer shall include in the caption, "ANSWER TO WRIT OF GARNISHMENT FOR CONTINUING LIEN ON EARNINGS," and the following paragraph shall be added as the first paragraph of the answer form prescribed in RCW 6.27.190:

"If you are withholding the defendant's nonexempt wages under a previously served writ for a continuing lien, answer only this portion of this form and mail or deliver the forms as directed in the writ. Withhold from the defendant's future nonexempt earnings as directed in the writ, and a second set of answer forms will be forwarded to you later.

ANSWER: I am presently holding the defendant's nonexempt earnings under a previous writ served on ----- that will terminate not later than -----, 19---

If you are NOT withholding the defendant's earnings under a previously served writ for a continuing

lien, answer the following portion of this form and mail or deliver the forms as directed in the writ. A second set of answer forms will be forwarded to you later for subsequently withheld earnings."

(4) In the event plaintiff fails to comply with this section, employer may elect to treat the garnishment as one not creating a continuing lien. [1987 c 442 § 1033; 1970 ex.s. c 61 § 6. Formerly RCW 7.33.360.]

6.27.350 Continuing lien on earnings—When lien becomes effective—Termination—Second answer.

(1) Where the garnishee's answer to a garnishment for a continuing lien reflects that the defendant is employed by the garnishee, the judgment or balance due thereon as reflected on the writ of garnishment shall become a lien on earnings due at the time of the effective date of the writ, as defined in this subsection, to the extent that they are not exempt from garnishment, and such lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment or until the expiration of the employer's payroll period ending on or before sixty days after the effective date of the writ, whichever occurs first, except that such lien on subsequent earnings shall terminate sooner if the employment relationship is terminated or if the underlying judgment is vacated, modified, or satisfied in full or if the writ is dismissed. The "effective date" of a writ is the date of service of the writ if there is no previously served writ; otherwise, it is the date of termination of a previously served writ or writs.

(2) At the time of the expected termination of the lien, the plaintiff shall mail to the garnishee cash or a check made payable to the garnishee in the amount of ten dollars, three additional stamped envelopes addressed as provided in RCW 6.27.110, and four additional copies of the answer form conspicuously marked at the top: "ANSWER THE SECOND PART OF THIS FORM WITH RESPECT TO THE TOTAL AMOUNT OF WAGES WITHHELD UNDER THIS GARNISHMENT, INCLUDING THE AMOUNT, IF ANY, STATED IN YOUR FIRST ANSWER, AND WITHIN TWENTY DAYS AFTER YOU RECEIVE THESE FORMS, MAIL OR DELIVER THEM AS DIRECTED IN THE WRIT."

(3) Within twenty days of receipt of the second answer form the garnishee shall file a second answer, in the form as provided in subsection (2) of this section, stating the total amount held subject to the garnishment. [1987 c 442 § 1034; 1970 ex.s. c 61 § 7. Formerly RCW 7.33.370.]

6.27.360 Continuing lien on earnings—Priorities.

A lien obtained under RCW 6.27.350 shall have priority over any subsequent garnishment lien or wage assignment except that service of a writ shall not be effective to create a continuing lien with such priority if a writ in the same case is pending at the time of the service of the new writ. [1987 c 442 § 1035; 1970 ex.s. c 61 § 8. Formerly RCW 7.33.380.]

Chapter 6.28

COMMISSIONERS TO CONVEY REAL ESTATE

Sections

6.28.010	Court may appoint, when.
6.28.020	Contents of deed.
6.28.030	Effect of conveyance pursuant to judgment.
6.28.040	Effect of conveyance pursuant to order of sale.
6.28.050	Approval of court necessary.
6.28.060	Execution of conveyance.
6.28.070	Recording.
6.28.080	Compelling performance.

Rules of court: Cf. CR 70.

6.28.010 Court may appoint, when. The several superior courts may, whenever it is necessary, appoint a commissioner to convey real estate:

(1) When by a judgment in an action, a party is ordered to convey real property to another, or any interest therein.

(2) When real property, or any interest therein, has been sold under a special order of the court and the purchase money paid therefor. [Code 1881 § 528; 1877 p 111 § 532; 1854 p 205 § 390; RRS § 605.]

6.28.020 Contents of deed. The deed of the commissioner shall so refer to the judgment authorizing the conveyance, that the same may be readily found, but need not recite the record in the case generally. [Code 1881 § 529; 1877 p 112 § 533; 1854 p 205 § 391; RRS § 606.]

6.28.030 Effect of conveyance pursuant to judgment. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land. [Code 1881 § 530; 1877 p 112 § 534; 1854 p 205 § 392; RRS § 607.]

6.28.040 Effect of conveyance pursuant to order of sale. A conveyance made in pursuance of a sale ordered by the court, shall pass to the grantee the title of all the parties to the action or proceeding. [Code 1881 § 531; 1877 p 112 § 535; 1854 p 205 § 393; RRS § 608.]

6.28.050 Approval of court necessary. A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be indorsed on the conveyance and recorded with it. [Code 1881 § 532; 1877 p 112 § 536; 1854 p 205 § 394; RRS § 609.]

6.28.060 Execution of conveyance. It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the name of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance. [Code 1881 § 533; 1877 p 112 § 537; 1854 p 205 § 395; RRS § 610.]

6.28.070 Recording. The conveyance shall be recorded in the office in which by law it should have been recorded had it been made by the parties whose title is

conveyed by it. [Code 1881 § 534; 1877 p 112 § 538; 1854 p 205 § 396; RRS § 611.]

6.28.080 Compelling performance. In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance. [Code 1881 § 535; 1877 p 112 § 539; 1854 p 205 § 397; RRS § 612.]

Chapter 6.32

PROCEEDINGS SUPPLEMENTAL TO EXECUTION

Sections

- 6.32.010 Order for examination of judgment debtor—Plaintiff entitled to costs—Additional fees if debtor fails to answer or appear.
- 6.32.015 Order to require judgment debtor to answer interrogatories.
- 6.32.020 Warrant, how vacated.
- 6.32.030 Third parties may be brought in for examination.
- 6.32.040 Before whom examined.
- 6.32.050 Procedure on examination.
- 6.32.060 Referee's oath.
- 6.32.070 Order authorizing payment by debtor of judgment debtor.
- 6.32.080 Order requiring delivery of money or property to sheriff.
- 6.32.085 Order charging partnership interest or directing sale.
- 6.32.090 Powers of sheriff.
- 6.32.100 How money or property applied by sheriff.
- 6.32.110 Disposition of balance after judgment satisfied.
- 6.32.120 Transfer of property may be enjoined.
- 6.32.130 Service of orders.
- 6.32.140 Service of warrant.
- 6.32.150 Discontinuance or dismissal of proceedings.
- 6.32.160 Costs to judgment creditor.
- 6.32.170 Costs to judgment debtor, when.
- 6.32.180 Disobedience of order punishable as contempt.
- 6.32.190 Attendance of judgment debtor.
- 6.32.200 Party or witness not excused from answering.
- 6.32.210 Proceedings in case of joint debtors.
- 6.32.220 Continuances.
- 6.32.240 Proceedings, before whom instituted.
- 6.32.250 Property exempt from seizure.
- 6.32.260 Proceedings to be heard without jury.
- 6.32.270 Adjudication of title to property—Jury trial.
- 6.32.280 Fee of referee.
- 6.32.290 Appointment of receiver—Notice.
- 6.32.300 Effect on pending supplemental proceedings.
- 6.32.310 Only one receiver may be appointed—Extending receivership.
- 6.32.320 Order, where to be filed.
- 6.32.330 Property vested in receiver.
- 6.32.340 Receiver's title extends back by relation.
- 6.32.350 Book of orders to be kept by clerk.

Rules of court: Cf. CR 69(b).

6.32.010 Order for examination of judgment debtor—Plaintiff entitled to costs—Additional fees if debtor fails to answer or appear. At any time within ten years after entry of a judgment for the sum of twenty-five dollars or over upon application by the judgment creditor, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge granting the order, or a referee appointed by him, to answer concerning the same; and the judge to whom application is made under

this chapter may, if it is made to appear to him by the affidavit of the judgment creditor, his agent or attorney that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge granting the order. Upon being brought before the judge he may be ordered to enter into a bond, with sufficient sureties, that he will attend from time to time before the judge or referee, as shall be directed, during the pendency of the proceedings and until the final termination thereof. If the judgment debtor or other persons against whom the special proceedings are instituted has been served with these proceedings, the plaintiff shall be entitled to costs of service, notary fees, and an appearance fee of twenty-five dollars. If the judgment debtor or other persons fail to answer or appear, the plaintiff shall additionally be entitled to reasonable attorney fees. If a plaintiff institutes special proceedings and fails to appear, a judgment debtor or other person against whom the proceeding was instituted who appears is entitled to an appearance fee of twenty-five dollars and reasonable attorney fees. [1985 c 215 § 1; 1983 1st ex.s. c 45 § 6; 1980 c 105 § 5; 1971 ex.s. c 211 § 1; 1957 c 8 § 7; 1899 c 93 § 1; 1893 c 133 § 1; RRS § 613.]

Application—1980 c 105: See note following RCW 4.16.020.

6.32.015 Order to require judgment debtor to answer interrogatories. At any time within ten years, after entry of a judgment for a sum of twenty-five dollars or over, upon application by the judgment creditor, such court or judge may by order served on the judgment debtor require such debtor to answer written interrogatories, under oath, in such form as may be approved by the court. No such creditor shall be required to proceed under this section nor shall he waive his rights to proceed under RCW 6.32.010 by proceeding under this section. [1980 c 105 § 6; 1971 ex.s. c 211 § 2.]

Application—1980 c 105: See note following RCW 4.16.020.

6.32.020 Warrant, how vacated. A warrant issued as prescribed in RCW 6.32.010 may be vacated or modified by the judge making the same, or by the court out of which the execution was issued, upon giving three days' notice to the opposite party. [1893 c 133 § 2; RRS § 614.]

6.32.030 Third parties may be brought in for examination. Any person may be made a party to a supplemental proceeding by service of a like order in like manner as that required to be served upon the judgment debtor, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that execution has been issued and return made thereon wholly or partially unsatisfied, and also that any person or corporation has personal property of the judgment debtor of the value of twenty-five dollars or over, or is indebted to him in said amount, or is holding the title to real estate for the judgment debtor, or has knowledge concerning the property interests of the judgment debtor, the judge may make an order requiring such person or corporation, or an officer thereof, to appear at a specified time and place before

him, or a referee appointed by him, and answer concerning the same. [1923 c 160 § 1; 1893 c 133 § 3; RRS § 615.]

6.32.040 Before whom examined. An order requiring a person to attend and be examined, made pursuant to any provision of this chapter, must require him so to attend and be examined either before the judge to whom the order is returnable or before a referee designated therein. Where the examination is taken before a referee, he must certify to the judge to whom the order is returnable all of the evidence and other proceedings taken before him. [1893 c 133 § 4; RRS § 616.]

6.32.050 Procedure on examination. Upon an examination made under this chapter, the answer of the party or witness examined must be under oath. A corporation must attend by and answer under the oath of an officer thereof, and the judge may, in his discretion, specify the officer. Either party may be examined as a witness in his own behalf, and may produce and examine other witnesses as upon the trial of an action. The judge or referee may adjourn any proceedings under this chapter, from time to time, as he thinks proper. [1893 c 133 § 5; RRS § 617.]

6.32.060 Referee's oath. Unless the parties expressly waive the referee's oath, a referee appointed as prescribed in this chapter must, before entering upon an examination or taking testimony, subscribe and take an oath that he will faithfully and fairly discharge his duty upon the reference, and make a just and true report according to the best of his understanding. The oath must be returned to the judge with the report of the testimony. [1893 c 133 § 6; RRS § 618.]

6.32.070 Order authorizing payment by debtor of judgment debtor. At any time after the commencement of a special proceeding authorized by this chapter, and before the appointment of a receiver therein, or the extension of a receivership thereto, the judge by whom the order or warrant was granted or to whom it is made returnable, may in his discretion upon proof by affidavit to his satisfaction that a person or corporation is indebted to the judgment debtor, and upon such notice given to such person or corporation as he deems just, or without notice make an order permitting the person or corporation to pay the sheriff designated in the order a sum on account of the alleged indebtedness not exceeding the sum which will satisfy the execution. A payment thus made is to the extent thereof a discharge of the indebtedness except as against a transferee from the judgment debtor in good faith, and for a valuable consideration, of whose rights the person or corporation had actual or constructive notice when the payment was made. [1893 c 133 § 7; RRS § 619.]

6.32.080 Order requiring delivery of money or property to sheriff. Where it appears from the examination or testimony taken in the special proceedings authorized

by this chapter that the judgment debtor has in his possession or under his control money or other personal property belonging to him, or that one or more articles of personal property capable of manual delivery, his right to the possession whereof is not substantially disputed, are in the possession or under the control of another person, the judge by whom the order or warrant was granted, or to whom it is returnable, may in his discretion, and upon such notice given to such persons as he deems just, or without notice, make an order directing the judgment debtor, or other person, immediately to pay the money or deliver the articles of personal property to a sheriff designated in the order, unless a receiver has been appointed or a receivership has been extended to the special proceedings, and in that case to the receiver. [1893 c 133 § 8; RRS § 620.]

6.32.085 Order charging partnership interest or directing sale. If it appears from the examination or testimony taken in the special proceedings authorized by this chapter that the judgment debtor owns an interest in a partnership, the judge who granted the order or warrant or to whom it is returnable may in his or her discretion, upon such notice to other partners as the judge deems just, and to the extent permitted by Title 25 RCW, (1) enter an order charging the partnership interest with payment of the judgment, directing that all or any part of distributions or other amounts becoming due to the judgment debtor, other than earnings as defined in RCW 6.27.010, be paid to a receiver if one has been appointed, otherwise to the clerk of the court that entered the judgment, for application to payment of the judgment in the same manner as proceeds from sale on execution and, in aid of the charging order, the court may make such other orders as a case requires, or (2) enter an order directing sale of the partnership interest in the same manner as personal property is sold on execution. [1987 c 442 § 1114.]

6.32.090 Powers of sheriff. If the sheriff to whom money is paid or other property is delivered, pursuant to an order made as prescribed in RCW 6.32.080, does not then hold an execution upon the judgment against the property of the judgment debtor, he has the same rights and power, and is subject to the same duties and liabilities with respect to the money or property, as if the money had been collected or the property had been levied upon by him by virtue of such an execution, except as provided in RCW 6.32.100. [1893 c 133 § 9; RRS § 621.]

6.32.100 How money or property applied by sheriff. After a receiver has been appointed or a receivership has been extended to the special proceedings, the judge must, by order, direct the sheriff to pay the money, or the proceeds of the property, deducting his fees, to the receiver; or if the case so requires to deliver to the receiver the property in his hands. But if it appears to the satisfaction of the judge that an order appointing a receiver or extending a receivership is not necessary, he may, by an order reciting that fact, direct the sheriff to

apply the money so paid, or the proceeds of the property so delivered, upon an execution in favor of the judgment creditor issued either before or after the payment or delivery to the sheriff. [1893 c 133 § 10; RRS § 622.]

6.32.110 Disposition of balance after judgment satisfied. Where money is paid or property is delivered as prescribed in RCW 6.32.070, 6.32.080, 6.32.090 and 6.32.100 and afterwards the special proceeding is discontinued or dismissed, or the judgment is satisfied without resorting to the money or property, or a balance of the money or of the proceeds of the property, or a part of the property remains in the sheriff's or receiver's hands after satisfying the judgment and the costs and expenses of the special proceeding, the judge must make an order directing the sheriff or receiver to pay the money or deliver the property so remaining in his hands to the debtor, or to such other person as appears to be entitled thereto, upon payment of his fees and all other sums legally chargeable against the same. [1893 c 133 § 11; RRS § 623.]

6.32.120 Transfer of property may be enjoined. The judge by whom the order or warrant was granted or to whom it is returnable may make an injunction order restraining any person or corporation, whether a party or not a party to the special proceeding, from making or suffering any transfer or other disposition of or interference with the property of the judgment debtor or the property or debt concerning which any person is required to attend and be examined, until further direction in the premises. Such an injunction may be made simultaneously with the order or warrant by which the special proceeding is instituted, and upon the same papers or afterwards, upon an affidavit showing sufficient grounds therefor. The judge or court may, as a condition of granting an application to vacate or modify the injunction order require the applicant to give security in such sum and in such manner as justice requires. [1893 c 133 § 12; RRS § 624.]

6.32.130 Service of orders. An injunction order or an order requiring a person to attend and be examined made as prescribed in this chapter must be served,——

(1) By delivering to the person to be served a certified copy of the original order and a copy of the affidavit on which it was made;

(2) Service upon a corporation is sufficient if made upon an officer, to whom a copy of a summons must be delivered. Where an order is personally served upon a corporation, unless the officer to be served is specially designated in the order, the order may be served upon any person upon whom a summons can be served. [1925 ex.s. c 38 § 1; 1893 c 133 § 13; RRS § 625.]

6.32.140 Service of warrant. The sheriff, when he arrests a judgment debtor by virtue of a warrant issued as prescribed in this chapter, must deliver to him a copy of the warrant and of the affidavit upon which it was granted. [1893 c 133 § 14; RRS § 626.]

6.32.150 Discontinuance or dismissal of proceedings. A special proceeding instituted as prescribed in this chapter may be discontinued at any time upon such terms as justice requires, by an order of the judge made upon the application of the judgment creditor. Where the judgment creditor unreasonably delays or neglects to proceed, or where it appears that his judgment has been satisfied, his proceedings may be dismissed upon like terms by a like order made upon the application of the judgment debtor, or of plaintiff in a judgment creditor's action against the debtor, or of a judgment creditor who has instituted either of the special proceedings authorized by this chapter. Where an order appointing a receiver or extending a receivership has been made in the course of the special proceeding, notice of the application for an order specified in this section must be given in such manner as the judge deems proper, to all persons interested in the receivership as far as they can conveniently be ascertained. [1893 c 133 § 15; RRS § 627.]

6.32.160 Costs to judgment creditor. The judge may make an order allowing to the judgment creditor a fixed sum as costs, consisting of his witness fees and referee's fees and other disbursements, and of a sum in addition thereto not exceeding twenty-five dollars, and directing the payment thereof out of any money which has come or may come to the hands of the receiver or of the sheriff within a time specified in the order. [1893 c 133 § 16; RRS § 628.]

6.32.170 Costs to judgment debtor, when. Where the judgment debtor or other person against whom the special proceeding is instituted has been examined, and property applicable to the payment of the judgment has not been discovered, the judge may make an order allowing him a sum, not to exceed twenty-five dollars, as costs, provided that any such sum so allowed the judgment debtor, shall be set off against the amount due the judgment creditor on his judgment. [1923 c 160 § 2; 1893 c 133 § 17; RRS § 629.]

6.32.180 Disobedience of order punishable as contempt. A person who refuses, or without sufficient excuse neglects, to obey an order of a judge or referee made pursuant to any of the provisions of this chapter, and duly served upon him, or an oral direction given directly to him by a judge or referee in the course of the special proceeding, or to attend before a judge or referee according to the command of a subpoena duly served upon him, may be punished by the judge of the court out of which the execution issued, as for contempt. [1893 c 133 § 18; RRS § 630.]

6.32.190 Attendance of judgment debtor. A judgment debtor who resides or does business in the state cannot be compelled to attend pursuant to an order made under the provisions of this chapter at a place without the county where his residence or place of business is situated. Where the judgment debtor to be examined under this chapter is a corporation the court may cause such corporation to appear and be examined by making like

order or orders as are prescribed in this chapter, directed to any officer or officers thereof. [1893 c 133 § 19; RRS § 631.]

6.32.200 Party or witness not excused from answering. A party or witness examined in a special proceeding authorized by this chapter is not excused from answering a question on the ground that his examination will tend to convict him of a commission of a fraud, or to prove that he has been a party to or privy to or knowing of a conveyance, assignment, transfer or other disposition of property for any purpose; or that he or another person claims to be entitled as against the judgment creditor or receiver appointed or to be appointed in the special proceeding to hold property derived from or through the judgment debtor, or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his behalf. But an answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding. [1893 c 133 § 20; RRS § 632.]

6.32.210 Proceedings in case of joint debtors. When, in proceedings under this chapter, personal service of the summons in the action was not made on all of the defendants, a debt due to, or other personal property owned by, one or more of the defendants not summoned jointly with the defendants summoned, or with any of them, may be reached by proceedings under this chapter. [1893 c 133 § 21; RRS § 633.]

6.32.220 Continuances. A special proceeding under this chapter instituted before one judge may be continued from time to time before another judge of the same court with like effect as if it had been instituted or commenced before the judge who last heard the same. [1893 c 133 § 22; RRS § 634.]

6.32.240 Proceedings, before whom instituted. Special proceedings under this chapter may be instituted and prosecuted before the superior or district court of the county in which the judgment was entered or any judge thereof, or before the superior or district court of any county to the sheriff of which an execution has been issued or in which a transcript of said judgment has been filed in the office of the clerk of said court or before any judge thereof. [1981 c 193 § 2; 1899 c 93 § 2; 1893 c 133 § 24; RRS § 636.]

6.32.250 Property exempt from seizure. This chapter does not authorize the seizure of, or other interference with, (1) any property which is expressly exempt by law from levy and sale by virtue of an execution, attachment, or garnishment; or (2) any money, thing in action or other property held in trust for a judgment debtor where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor; or (3) the earnings of the judgment debtor for personal services to the extent they would be exempt against garnishment of the employer under RCW

6.27.150. [1987 c 442 § 1115; 1893 c 133 § 25; RRS § 637.]

Trust income is subject to execution in certain cases notwithstanding RCW 6.32.250: RCW 11.96.150.

6.32.260 Proceedings to be heard without jury. Proceedings under this chapter are special proceedings, and shall be heard by the judge or referee before whom the same are returnable without a jury, except as provided in RCW 6.32.270. [1923 c 160 § 3; 1893 c 133 § 26; RRS § 638.]

6.32.270 Adjudication of title to property—Jury trial. In any supplemental proceeding, where it appears to the court that a judgment debtor may have an interest in or title to any real property, and such interest or title is disclaimed by the judgment debtor or disputed by another person, or it appears that the judgment debtor may own or have a right of possession to any personal property, and such ownership or right of possession is substantially disputed by another person, the court may, if the person or persons claiming adversely be a party to the proceeding, adjudicate the respective interests of the parties in such real or personal property, and may determine such property to be wholly or in part the property of the judgment debtor. If the person claiming adversely to the judgment debtor be not a party to the proceeding, the court shall by show cause order or otherwise cause such person to be brought in and made a party thereto, and shall set such proceeding for hearing on the first open date in the trial calendar. Any person so made a party, or any party to the original proceeding, may have such issue determined by a jury upon demand therefor and payment of a jury fee as in other civil actions: *Provided*, That such person would be entitled to a jury trial if the matter was adjudicated in a separate action. [1923 c 160 § 4; RRS § 638-1.]

6.32.280 Fee of referee. The fees of referees appointed in proceedings under this chapter shall be five dollars per day. [1893 c 133 § 27; RRS § 639.]

6.32.290 Appointment of receiver—Notice. At any time after making an order requiring the judgment debtor or any other person to attend and be examined, or the issuing of a warrant, as prescribed in this chapter, the judge to whom the order or warrant is returnable, or the court out of which the order was issued, may make an order appointing a receiver of the property of the judgment debtor. At least two days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor, unless the judge or court is satisfied that he cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with the notice, or may direct notice to be given in any manner which the judge thinks proper. But where the order to attend and be examined or the warrant has been served upon the judgment debtor, a receiver may be appointed upon

the return day thereof, or at the close of the examination, without further notice to him. [1893 c 133 § 28; RRS § 640.]

Rules of court: CR 66.

6.32.300 Effect on pending supplemental proceedings.

The judge must ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether any other special proceeding authorized by this chapter is pending against the judgment debtor, or if a receiver has been appointed or application has been made for the appointment of a receiver of the property of the judgment debtor in any other action by a judgment creditor. If either is pending, and a receiver has not been appointed therein, notice of the application for the appointment of a receiver, and of all of the subsequent proceedings respecting the receivership, must be given in such manner as the judge directs to the judgment creditor prosecuting it. [1893 c 133 § 29; RRS § 641.]

6.32.310 Only one receiver may be appointed—

Extending receivership. Only one receiver of the property of the judgment debtor shall be appointed. Where a receiver thereof has already been appointed the judge, instead of making the order prescribed in RCW 6.32.300, must make an order extending the receivership to the special proceedings before him. Such an order gives to the judgment creditor the same rights as if a receiver was appointed upon his application, including the right to apply to the court to control, direct or remove the receiver, or to subordinate the proceedings in or by which the receiver was appointed to those taken under his judgment. [1893 c 133 § 30; RRS § 642.]

6.32.320 Order, where to be filed.

An order appointing a receiver or extending a receivership must be filed in the office of the county clerk wherein the judgment roll in the action is filed; or if the special proceeding is founded upon an execution issued out of a court other than that in which the judgment was rendered, in the office of the clerk of the county wherein the transcript of the judgment is filed. [1893 c 133 § 31; RRS § 643.]

6.32.330 Property vested in receiver.

The property of the judgment debtor is vested in a receiver, who has duly qualified, from the time of filing the order appointing him or extending his receivership, as the case may be, subject to the following exceptions:

(1) Real property is vested in the receiver only from the time when the order, or a certified copy thereof, as the case may be, is filed with the auditor of the county where it is situated.

(2) When the judgment debtor, at the time when the order is filed, resides in another county of the state, his personal property is vested in the receiver only from the time when a copy of the order, certified by the auditor in whose office it is recorded, is filed with the auditor of

the county where he resides. [1893 c 133 § 32; RRS § 644.]

6.32.340 Receiver's title extends back by relation.

Where the receiver's title to personal property has become vested, as prescribed in RCW 6.32.330, it also extends back by relation, for the benefit of the judgment creditor, in whose behalf the special proceeding was instituted as follows:

(1) When an order requiring the judgment debtor to attend and be examined, or a warrant requiring the sheriff to arrest him and bring him before the judge, has been served, before the appointment of the receiver, or the extension of the receivership, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or warrant.

(2) Where an order or warrant has not been served as specified in the foregoing subdivision, but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor, which was in the hands or under the control of the person or corporation thus required to attend at the time of the service of the order, and to a debt then due to him from that person or corporation.

(3) In every other case where notice of application for the appointment of a receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements of an order prescribing a substitute for personal service.

(4) Where the case is within two or more of the foregoing subdivisions of this section, the rule most favorable to the judgment creditor must be adopted. But this section does not affect the title of a purchaser in good faith without notice, and for a valuable consideration; or the payment of a debt in good faith and without notice. [1893 c 133 § 33; RRS § 645.]

6.32.350 Book of orders to be kept by clerk.

Each county clerk must keep in his office a book indexed to the names of the judgment debtors, styled "book of orders appointing receivers of judgment debtors." A county clerk in whose office an order or a certified copy of an order is filed, as prescribed in this chapter, must immediately note thereupon the time of filing it, and as soon as practicable, must record it in the book so kept by him. He must also, upon request, furnish forthwith to any party or person interested, one or more certified copies thereof. For each omission to comply with any provision of this section, a county clerk forfeits to the party aggrieved two hundred and fifty dollars, in addition to all damages sustained by reason of the omission. [1893 c 133 § 34; RRS § 646.]

Chapter 6.36
UNIFORM ENFORCEMENT OF FOREIGN
JUDGMENTS ACT

Sections	
6.36.010	Definitions.
6.36.025	Filing of foreign judgment—Authorized—Effect.
6.36.035	Affidavit of last address of judgment debtor, creditor—Filing—Notice of filing of judgment—Contents—Effect.
6.36.045	Effect of appeal from or stay of execution of foreign judgment—Grounds for stay of enforcement.
6.36.130	Sale under levy.
6.36.140	Interest and costs.
6.36.150	Satisfaction of judgment.
6.36.160	Optional procedure.
6.36.900	Construction—1953 c 191.
6.36.910	Short title.

Rules of court: Cf. CR 69(a).

Foreign judgments for debt, faith accorded: RCW 5.44.020.

Uniform judicial notice of foreign laws act: Chapter 5.24 RCW.

6.36.010 Definitions. As used in this chapter: (1) "Foreign judgment" means any judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state.

(2) "Register" means to file a foreign judgment in a court of this state.

(3) "Levy" means to take control of or create a lien upon property under any judicial writ or process whereby satisfaction of a judgment may be enforced against such property.

(4) "Judgment debtor" means the party against whom a foreign judgment has been rendered. [1953 c 191 § 1.]

6.36.025 Filing of foreign judgment—Authorized—Effect. A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of any superior court of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, or staying as a judgment of a superior court of this state and may be enforced or satisfied in like manner. [1977 ex.s. c 45 § 1.]

6.36.035 Affidavit of last address of judgment debtor, creditor—Filing—Notice of filing of judgment—Contents—Effect. (1) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post

office address of the judgment creditor and the judgment creditor's lawyer if any in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until ten days after the date the judgment is filed or until ten days after mailing the notice of filing, whether mailed by the clerk or judgment creditor, whichever is later. [1979 c 97 § 1; 1977 ex.s. c 45 § 2.]

6.36.045 Effect of appeal from or stay of execution of foreign judgment—Grounds for stay of enforcement.

(1) If the judgment debtor shows the superior court of any county that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the superior court of any county any ground upon which enforcement of a judgment of a superior court of any county of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state. [1977 ex.s. c 45 § 3.]

6.36.130 Sale under levy. Sale under the levy may be held at any time after final judgment, either personal or *quasi in rem*, but not earlier except as otherwise provided by law for sale under levy on perishable goods. Sale and distribution of the proceeds shall be made in accordance with the law of this state. [1953 c 191 § 13.]

6.36.140 Interest and costs. When a registered foreign judgment becomes a final judgment of this state, the court shall include as part of the judgment interest payable on the foreign judgment under the law of the state in which it was rendered, and the cost of obtaining the authenticated copy of the original judgment. The court shall include as part of its judgment court costs incidental to the proceeding in accordance with the law of this state. [1953 c 191 § 14.]

6.36.150 Satisfaction of judgment. Satisfaction, either partial or complete, of the original judgment or of a judgment entered thereupon in any other state shall operate to the same extent as satisfaction of the judgment in this state, except as to costs authorized by RCW 6.36.140. [1953 c 191 § 15.]

6.36.160 Optional procedure. The right of a judgment creditor to bring an action to enforce his judgment

instead of proceeding under this chapter remains unimpaired. [1953 c 191 § 16.]

6.36.900 Construction—1953 c 191. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1953 c 191 § 17.]

6.36.910 Short title. This chapter may be cited as the "Uniform Enforcement of Foreign Judgments Act." [1953 c 191 § 18.]

Chapter 6.40

UNIFORM FOREIGN MONEY–JUDGMENTS RECOGNITION ACT

Sections

6.40.010	Definitions.
6.40.020	Applicability.
6.40.030	Recognition and enforcement.
6.40.040	Grounds for nonrecognition.
6.40.050	Personal jurisdiction.
6.40.060	Stay in case of appeal.
6.40.070	Saving clause.
6.40.900	Uniformity of interpretation.
6.40.905	Short title.
6.40.910	Application to judgments in effect on effective date.
6.40.915	Section headings.

6.40.010 Definitions. As used in this chapter:

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands;

(2) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters. [1975 1st ex.s. c 240 § 1.]

6.40.020 Applicability. This chapter applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal. [1975 1st ex.s. c 240 § 2.]

6.40.030 Recognition and enforcement. Except as provided in RCW 6.40.040, a foreign judgment meeting the requirements of RCW 6.40.020 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit. [1975 1st ex.s. c 240 § 3.]

6.40.040 Grounds for nonrecognition. (1) A foreign judgment is not conclusive if

(a) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) the foreign court did not have personal jurisdiction over the defendant; or

(c) the foreign court did not have jurisdiction over the subject matter.

(2) A foreign judgment need not be recognized if

(a) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(b) the judgment was obtained by fraud;

(c) the claim for relief on which the judgment is based is repugnant to the public policy of this state;

(d) the judgment conflicts with another final and conclusive judgment;

(e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action. [1975 1st ex.s. c 240 § 4.]

6.40.050 Personal jurisdiction. (1) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if

(a) the defendant was served personally in the foreign state;

(b) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(c) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;

(e) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a claim for relief arising out of business done by the defendant through that office in the foreign state; or

(f) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a claim for relief arising out of such operation.

(2) The courts of this state may recognize other bases of jurisdiction. [1975 1st ex.s. c 240 § 5.]

6.40.060 Stay in case of appeal. If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal. [1975 1st ex.s. c 240 § 6.]

6.40.070 Saving clause. This chapter does not prevent the recognition of a foreign judgment in situations not covered by this chapter. [1975 1st ex.s. c 240 § 7.]

6.40.900 Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1975 1st ex.s. c 240 § 8.]

6.40.905 Short title. This chapter may be cited as the Uniform Foreign Money–Judgments Recognition Act. [1975 1st ex.s. c 240 § 9.]

6.40.910 Application to judgments in effect on effective date. This chapter shall apply to all foreign judgments in effect on the date this chapter becomes effective as well as all judgments rendered after such date. [1975 1st ex.s. c 240 § 10.]

Effective date—1975 1st ex.s. c 240: September 8, 1975, see preface to 1975 session laws.

6.40.915 Section headings. Section headings as used in this act shall not constitute part of the law. [1975 1st ex.s. c 240 § 12.]

Title 7

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chattel mortgages: Chapter 62A.9 RCW.

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Homesteads: Chapter 6.13 RCW.

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Injunction: State Constitution Art. 4 § 6 (Amendment 28).

Injunctions, labor disputes: Chapter 49.32 RCW.

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Support of dependent children—Alternative method—1971 act: Chapter 74.20A RCW.

Supreme court: State Constitution Art. 4 § 3(a) (Amendment 25).

Swine, sheep, goats at large: Chapter 16.12 RCW.

Television, cable services, unlawful sale or theft, civil cause of action: RCW 9A.56.250.

Trial by jury: State Constitution Art. 1 § 21.

Unemployment compensation, review, etc.: Chapter 50.32 RCW.

Unlawful entry and detainer: Chapter 59.16 RCW.

Veterans—Uniform guardianship act: Chapter 73.36 RCW.

Warehouseman's lien: Chapter 62A.7 RCW.

Waste and trespass: Chapter 64.12 RCW.

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Chapter 7.04 ARBITRATION

Sections

7.04.010	Arbitration authorized.
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7.04.030	Stay of action pending arbitration.
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Arbitration of labor disputes: Chapter 49.08 RCW.

7.04.010 Arbitration authorized. Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this chapter, any controversy which may be the subject of an action existing between them at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement.

The provisions of this chapter shall not apply to any arbitration agreement between employers and employees or between employers and associations of employees, and as to any such agreement the parties thereto may provide for any method and procedure for the settlement of existing or future disputes and controversies, and such

procedure shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement. [1947 c 209 § 1; 1943 c 138 § 1; Rem. Supp. 1947 § 430-1.]

Saving—1943 c 138: "Sections 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, and 274 of the Code of 1881 (sections 420 to 430, both inclusive, Remington's Revised Statutes; sections 7339 to 7349, both inclusive, Pierce's Code) are hereby repealed: *Provided, however,* That arbitration proceedings pending upon the effective date of this act may be carried through to final judgment under the provisions of said sections, which are hereby continued in effect for such purposes only." [1943 c 138 § 23.] This applies to RCW 7.04.010 through 7.04.170, 7.04.180 through 7.04.220.

7.04.020 Applications in writing—How heard—Jurisdiction. Any application made under authority of this chapter shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions or petitions, except as otherwise herein expressly provided.

Jurisdiction under this chapter is specifically conferred on the district and superior courts of the state, subject to jurisdictional limitations. [1982 c 122 § 1; 1943 c 138 § 2; Rem. Supp. 1943 § 430-2.]

7.04.030 Stay of action pending arbitration. If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in accordance with the agreement. [1943 c 138 § 3; Rem. Supp. 1943 § 430-3.]

7.04.040 Motion to compel arbitration—Notice and hearing—Motion for stay. (1) A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement. Eight days notice in writing of such application shall be served upon the party alleged to be in default. Service thereof shall be made in the manner provided by law for service of a summons in a civil action in the court specified in RCW 7.04.020. If the court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the court shall make an order directing the parties to proceed to arbitrate in accordance with the terms of the agreement.

(2) If the court shall find that a substantial issue is raised as to the existence or validity of the arbitration agreement or the failure to comply therewith, the court shall proceed immediately to the trial of such issue. If upon such trial the court finds that no written agreement providing for arbitration was made or that there is no default in proceeding thereunder, the motion to compel arbitration shall be denied.

(3) Either party shall have the right to demand the immediate trial by jury of any such issue concerning the validity or existence of the arbitration agreement or the failure to comply therewith. Such demand shall be made before the return day of the motion to compel arbitration under this section, or if no such motion was made, the demand shall be made in the application for a stay of the arbitration, as provided under subsection (4)(a) hereunder.

(4) In order to raise an issue as to the existence or validity of the arbitration agreement or the failure to comply therewith, a party must set forth evidentiary facts raising such issue and must either (a) make a motion for a stay of the arbitration. If a notice of intention to arbitrate has been served as provided in RCW 7.04-.060, notice of the motion for the stay must be served within twenty days after service of said notice. Any issue regarding the validity or existence of the agreement or failure to comply therewith shall be tried in the same manner as provided in subsections (2) and (3) hereunder; or (b) by contesting a motion to compel arbitration as provided under subsection (1) of this section. [1943 c 138 § 4; Rem. Supp. 1943 § 430-4.]

7.04.050 Appointment of arbitrators by court. Upon the application of any party to the arbitration agreement, and upon notice to the other parties thereto, the court shall appoint an arbitrator, or arbitrators, in any of the following cases:

(1) When the arbitration agreement does not prescribe a method for the appointment of arbitrators.

(2) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.

(3) When any arbitrator fails or is otherwise unable to act, and his successor has not been duly appointed.

(4) In any of the foregoing cases where the arbitration agreement is silent as to the number of arbitrators, three arbitrators shall be appointed by the court.

Arbitrators appointed by the court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate. [1943 c 138 § 5; Rem. Supp. 1943 § 430-5.]

7.04.060 Notice of intention to arbitrate—Contents. When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties out of or in relation to such agreement, the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate. Such notice must state in substance that unless within twenty days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, he shall thereafter be barred from putting in issue the existence or validity of the agreement or the failure to comply therewith. [1943 c 138 § 6; Rem. Supp. 1943 § 430-6.]

7.04.070 Hearing by arbitrators. The arbitrators shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award.

All the arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award. The court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of the controversy. [1943 c 138 § 7; Rem. Supp. 1943 § 430-7.]

7.04.080 Failure of party to appear no bar to hearing and determination. If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them. [1943 c 138 § 8; Rem. Supp. 1943 § 430-8.]

7.04.090 Time of making award—Extension—Failure to make award when required. If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, unless the parties, in writing, extend the time in which that award may be made. If the arbitrator fails to make an award when required, the court, upon motion and hearing, shall order the arbitrator to enter an award within the time fixed by the court, and may impose sanctions or terms deemed reasonable by the court. Failure to make an award within the time required shall not divest the arbitrators of jurisdiction to make an award or to correct or modify an award as provided in RCW 7.04.175. [1985 c 265 § 1; 1943 c 138 § 9; Rem. Supp. 1943 § 430-9.]

7.04.100 Representation by attorney. Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators. [1943 c 138 § 10; Rem. Supp. 1943 § 430-10.]

7.04.110 Witnesses—Compelling attendance. The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring with him any book, record, document or other evidence. The fees for such attendance shall be the same as the fees of witnesses in the superior court. Each arbitrator shall have the power to administer oaths.

Subpoenae shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpoenae to testify before a court of record in this state. If any person so summoned to testify shall refuse or neglect to obey such subpoenae, upon petition authorized by the arbitrators or a majority of them, the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the

same manner now provided for the attendance of witnesses or the punishment of them in the courts of this state. [1943 c 138 § 11; Rem. Supp. 1943 § 430-11.]

Witnesses, compelling attendance: Chapter 5.56 RCW.

7.04.120 Depositions. Depositions may be taken with or without a commission in the same manner and upon the same grounds as provided by law for the taking of depositions in suits pending in the courts of record in this state. [1943 c 138 § 12; Rem. Supp. 1943 § 430-12.]

Depositions: Rules of court: Cf. CR 28-CR 32; see also Title 5 RCW.

7.04.130 Order to preserve property or secure satisfaction of award. At any time before final determination of the arbitration the court may upon application of a party to the agreement to arbitrate make such order or decree or take such proceeding as it may deem necessary for the preservation of the property or for securing satisfaction of the award. [1943 c 138 § 13; Rem. Supp. 1943 § 430-13.]

7.04.140 Form of award—Copies to parties. The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a true copy of the award to each of the parties or their attorneys. [1943 c 138 § 14; Rem. Supp. 1943 § 430-14.]

7.04.150 Confirmation of award by court. At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is beyond the jurisdiction of the court, or is vacated, modified, or corrected, as provided in RCW 7.04.160 and 7.04.170. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it. [1982 c 122 § 2; 1943 c 138 § 15; Rem. Supp. 1943 § 430-15.]

7.04.160 Vacation of award—Rehearing. In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(1) Where the award was procured by corruption, fraud or other undue means.

(2) Where there was evident partiality or corruption in the arbitrators or any of them.

(3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.

(5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in RCW 7.04.060, or without serving a motion to compel arbitration, as provided in RCW 7.04.040(1).

An award shall not be vacated upon any of the grounds set forth under subdivisions (1) to (4), inclusive, unless the court is satisfied that substantial rights of the parties were prejudiced thereby.

Where an award is vacated, the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order. [1943 c 138 § 16; Rem. Supp. 1943 § 430-16.]

7.04.170 Modification or correction of award by court. In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

(1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(2) Where the arbitrators have awarded upon a matter not submitted to them.

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof. [1943 c 138 § 17; Rem. Supp. 1943 § 430-17.]

7.04.175 Modification or correction of award by arbitrators. On application of a party or, if an application to the court is pending under RCW 7.04.150, 7.04.160, or 7.04.170, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in RCW 7.04.170 (1) and (3). The application shall be made, in writing, within ten days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that objections, if any, must be served within ten days from the notice. The arbitrators shall rule on the application within twenty days after such application is made. Any award so modified or corrected is subject to the provisions of RCW 7.04.150, 7.04.160, and 7.04.170 and is to be considered the award in the case for purposes of this chapter, said award being effective on the date the corrections or modifications are made. If corrections or modifications are denied, then the award shall be effective as of the date the award was originally made. [1985 c 265 § 2.]

7.04.180 Notice of motion to vacate, modify, or correct award—Stay. Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after a copy

of the award is delivered to the party or his attorney. Such motion shall be made in the manner prescribed by law for the service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. [1943 c 138 § 18; Rem. Supp. 1943 § 430–18.]

7.04.190 Judgment—Costs. Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars and disbursements, may be awarded by the court in its discretion. [1943 c 138 § 19; Rem. Supp. 1943 § 430–19.]

7.04.200 Judgment roll—Docketing. Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment roll:

(1) The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award.

(2) The award.

(3) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(4) A copy of the judgment.

The judgment may be docketed as if it was rendered in an action. [1943 c 138 § 20; Rem. Supp. 1943 § 430–20.]

7.04.210 Effect of judgment. The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered. [1943 c 138 § 21; Rem. Supp. 1943 § 430–21.]

7.04.220 Appeal. An appeal may be taken from any final order made in a proceeding under this chapter, or from a judgment entered upon an award, as from an order or judgment in any civil action. [1943 c 138 § 22; Rem. Supp. 1943 § 430–22.]

Chapter 7.06

MANDATORY ARBITRATION OF CIVIL ACTIONS

Sections	
7.06.010	Authorization.
7.06.020	Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support.
7.06.030	Implementation by supreme court rules.
7.06.040	Qualifications, appointment and compensation of arbitrators.

7.06.050	Decision and award—Appeals—Trial—Judgment.
7.06.060	Costs and attorney's fees.
7.06.070	Right to trial by jury.
7.06.900	Severability—1979 c 103.
7.06.910	Effective date—1979 c 103.

Rules of court: See Superior Court Mandatory Arbitration Rules (MAR).

7.06.010 Authorization. In counties of the second class and larger, the superior court of the county, by majority vote of the judges thereof, or the county legislative authority may authorize mandatory arbitration of civil actions under this chapter. In all other counties, the superior court of the county, by a majority vote of the judges thereof, may authorize mandatory arbitration of civil actions under this chapter. [1984 c 258 § 511; 1979 c 103 § 1.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.06.020 Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support. (Effective until July 1, 1988.) (1) All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of ten thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to twenty-five thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration.

(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved. [1987 c 202 § 127; 1985 c 265 § 3; 1982 c 188 § 1; 1979 c 103 § 2.]

Rules of court: MAR 1.2.

7.06.020 Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support. (Effective July 1, 1988.) (1) All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to thirty-five thousand dollars, exclusive of interest and costs, are subject to mandatory arbitration.

(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support

payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved. [1987 c 212 § 101; 1987 c 202 § 127; 1985 c 265 § 3; 1982 c 188 § 1; 1979 c 103 § 2.]

Reviser's note: This section was amended by 1987 c 202 § 127 and by 1987 c 212 § 101, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Rules of court: MAR 1.2.

Effective date—1987 c 212 §§ 101, 102: "Sections 101 and 102 of this act shall take effect July 1, 1988." [1987 c 212 § 1902.]

Intent—1987 c 202: See note following RCW 2.04.190.

7.06.030 Implementation by supreme court rules. The supreme court shall by rule adopt procedures to implement mandatory arbitration of civil actions under this chapter. [1979 c 103 § 3.]

7.06.040 Qualifications, appointment and compensation of arbitrators. (Effective until July 1, 1988.) The qualifications and appointment of arbitrators shall be prescribed by rules adopted by the supreme court. Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court. [1979 c 103 § 4.]

7.06.040 Qualifications, appointment and compensation of arbitrators. (Effective July 1, 1988.) The appointment of arbitrators shall be prescribed by rules adopted by the supreme court. An arbitrator must be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator. The supreme court may prescribe by rule additional qualifications of arbitrators.

Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court. [1987 c 212 § 102; 1979 c 103 § 4.]

Effective date—1987 c 212 §§ 101, 102: See note following RCW 7.06.020.

7.06.050 Decision and award—Appeals—Trial—Judgment. Following a hearing as prescribed by court rule, the arbitrator shall file his decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions. [1982 c 188 § 2; 1979 c 103 § 5.]

7.06.060 Costs and attorney's fees. The supreme court may by rule provide for costs and reasonable attorney's fees that may be assessed against a party appealing from the award who fails to improve his position on the trial de novo. [1979 c 103 § 6.]

7.06.070 Right to trial by jury. No provision of this chapter may be construed to abridge the right to trial by jury. [1979 c 103 § 7.]

7.06.900 Severability—1979 c 103. 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. [1979 c 103 § 9.]

7.06.910 Effective date—1979 c 103. This act shall take effect July 1, 1980. [1979 c 103 § 10.]

Chapter 7.08

ASSIGNMENT FOR BENEFIT OF CREDITORS

Sections	
7.08.010	Assignment must be for benefit of all creditors.
7.08.020	Assent of creditors presumed.
7.08.030	Assignment—Procedure—Creditor's selection of new assignee.
7.08.050	Inventory by assignee—Bond.
7.08.060	Notice to creditors.
7.08.070	List of creditors' claims.
7.08.080	Exceptions to claims.
7.08.090	Dividends—Final account—Compensation.
7.08.100	Assignee subject to court's control.
7.08.110	Assignment not void, when.
7.08.120	Additional inventory.
7.08.130	Procedure on claims not due—Limitation on presentation of claims.
7.08.140	Authority of assignee to dispose of assets.
7.08.150	Procedure when assignee dies, fails to act, misapplies estate, or if bond insufficient.
7.08.170	Discharge of assignor.
7.08.180	Sheriff disqualified from acting.
7.08.190	Right of assignor to exemption.
7.08.200	Exemption, how claimed—Objections.

Fraud in assignment for benefit of creditors: RCW 9.45.100.

7.08.010 Assignment must be for benefit of all creditors. No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims; and after the payment of the costs and disbursements thereof, including the attorney fees allowed by law in case of judgment, out of the estate of the insolvent, such claim or claims shall be deemed as presented, and shall share pro rata with other claims as hereinafter provided. [1893 c 100 § 1; 1890 p 83 § 1; RRS § 1086.]

7.08.020 Assent of creditors presumed. In case of an assignment for the benefit of all the creditors of the assignor, the assent of the creditors shall be presumed. [1890 p 83 § 2; RRS § 1087.]

7.08.030 Assignment—Procedure—Creditor's selection of new assignee. The debtor shall annex to such assignment an inventory, under oath, of all his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, with their post office address and a list of the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate. Every assignment shall be in writing, and duly acknowledged in the same manner as conveyances of real estate, and recorded in the record of deeds of the county where the person making the same resides, or where the business in respect to which the same is made has been carried on.

Upon the application of two or more creditors of said debtor therefor, by petition to the judge of the superior court of the county in which such assignment is or should be recorded, at any time within thirty days from the making or recording of such assignment, it shall be the duty of said superior judge to direct the clerk of said superior court to order a meeting of the creditors of said debtors, to choose an assignee of the estate of said debtor in lieu of the assignee named by the debtor in his assignment; and thereupon the clerk of said court shall forthwith give notice to all the creditors of said debtor to meet at his office at a time stated, not to exceed fifteen days from the date of such notice, to select one or more assignees in the place of the assignee named by the debtor in his assignment. Such creditors may appear in person or by proxy, and a majority in number and value of said creditors attending such meeting shall select one or more assignees; and in the event that no one shall receive a majority vote of said creditors who represent at least one-half in amount of all claims represented at such meeting, then, and in that event, said clerk shall certify that fact to the judge of the superior court aforesaid, and thereupon said superior judge shall select and appoint an assignee.

When such assignee shall have been selected by such creditors, or appointed by the superior judge as herein provided, then the assignee named in the debtor's assignment shall forthwith make to the assignee elected by the creditors or appointed by the superior judge, an assignment and conveyance of all the estate, real and personal, that has been assigned or conveyed to him by said debtor; and such assignee so elected by the creditors or appointed by the superior judge, upon giving the bond required of an assignee by RCW 7.08.010 through 7.08.170, shall possess all the powers, and be subject to all the duties imposed by RCW 7.08.010 through 7.08.170, as fully to all intents and purposes as though named in the debtor's assignment.

From the time of the pending of an application to elect an assignee by the creditors, and until the time shall be terminated by an election or appointment as herein provided, no property of the debtor, except perishable property, shall be sold or disposed of by any assignee; but the same shall be safely and securely kept until the election or appointment of an assignee as herein provided. No creditor shall be entitled to vote at any such meeting called for the purpose of electing an assignee, until he shall have presented to the clerk of the

superior court, who shall preside at such meeting, a verified statement of his claim against the debtor. [1890 p 83 § 3; RRS § 1088. Formerly RCW 7.08.030 and 7.08.040.]

7.08.050 Inventory by assignee—Bond. The assignee shall also forthwith file with the clerk of the superior court of the county where such assignment will be recorded, a true and full inventory and valuation of said estate, under oath, as far as the same has come to his knowledge, and shall then and there enter into bonds to the state of Washington, for the use of the creditors, in double the amount of the inventory and valuation, with two or more sufficient sureties, to be approved by said clerk, for the faithful performance of said trust; and the assignee may thereupon proceed to perform any duties necessary to carry into effect the intention of said assignment. [1890 p 85 § 4; RRS § 1089.]

7.08.060 Notice to creditors. The assignee shall forthwith give notice of such assignment, by publication in some newspaper in the county, if any, and if none, then in the nearest county thereto, which publication shall be continued at least six weeks; and shall forthwith send a notice by mail to each creditor of whom he shall be informed, directed to their usual place of residence, and notifying the creditors to present their claims, under oath, to him within three months thereafter. [1890 p 85 § 5; RRS § 1090.]

7.08.070 List of creditors' claims. At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claims to be such, with a statement of their claims, and also an affidavit of publication or notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing, duly verified. [1890 p 85 § 6; RRS § 1091.]

7.08.080 Exceptions to claims. Any person interested may appear within three months after filing such report and file with said clerk any exceptions to the claim or demand of any creditor, and the clerk shall forthwith cause notice thereof to be given to the creditor, which shall be served and returned as in case of summons, and the said court shall proceed to hear proof of the parties in the premises, and shall render such judgment therein as shall be just, and may allow a trial by jury thereon. [1957 c 9 § 7; 1890 p 85 § 7; RRS § 1092.]

7.08.090 Dividends—Final account—Compensation. If no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make from time to time fair and equal dividends among the creditors of the assets in his hands, in proportion to their claims, and as soon as may be to render a final account of said trust to said court, which may allow such commissions to said assignee in the final settlement as may be considered right

and just, not exceeding, however, the fees and compensation allowed by law to administrators and executors. [1893 c 26 § 1; 1890 p 86 § 8; RRS § 1093.]

7.08.100 Assignee subject to court's control. The assignee shall at all times be subject to the order of the court or judge, and the said court or judge may, by citation and attachment, compel the assignee from time to time to file reports of his proceedings, and of the situation and condition of the trust, and to proceed in the faithful execution of the duties required by RCW 7.08.010 through 7.08.170. [1890 p 86 § 9; RRS § 1094.]

7.08.110 Assignment not void, when. No assignment shall be declared fraudulent or void for want of any list or inventory as provided in RCW 7.08.010 through 7.08.170. The court or judge may, upon application of the assignee, or any creditor, compel the appearance in person of the debtor before such court or judge to answer under oath such matters as may then and there be inquired of him; and such debtor may then and there be fully examined under oath as to the amount and situation of his estate, and the names of the creditors, and amounts due to each, with their places of residence, and the court may compel the delivery to the assignee of any property or estate embraced in the assignment. [1957 c 9 § 8; 1890 p 86 § 10; RRS § 1095.]

7.08.120 Additional inventory. The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into his hands under such assignment, after the filing of the first inventory, and the clerk may thereupon require him to give additional security. [1890 p 86 § 11; RRS § 1096.]

7.08.130 Procedure on claims not due—Limitation on presentment of claims. Any creditor may claim debts to become due, as well as debts due, but on debts not due, a reasonable abatement shall be made when the same are not drawing interest; and all creditors who shall not exhibit their claims within the term of three months from the publication of notice as aforesaid shall not participate in the dividends until after payment in full of all claims presented within said term and allowed by the court. [1890 p 86 § 12; RRS § 1097.]

7.08.140 Authority of assignee to dispose of assets. Any assignee as aforesaid shall have as full power and authority to dispose of all estate, real and personal, assigned, as the debtor had at the time of assignment, and to sue for and recover, in the name of such assignee, everything belonging or appertaining to said estate, and generally to do whatever the debtor might have done in the premises; but no sale of real estate belonging to said trust shall be made without notice published, as in case of sale of real estate on execution, unless the court shall order and direct otherwise. [1890 p 87 § 13; RRS § 1098.]

7.08.150 Procedure when assignee dies, fails to act, misapplies estate, or if bond insufficient. In case any assignee shall die before closing of his trust, or in case any assignee shall fail or neglect, for the period of thirty days after the making of any assignment, to file an inventory and valuation, and give bonds as required by RCW 7.08.010 through 7.08.170, the superior court, or judge thereof, of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust embraced in such assignment; and such person, on giving the bond, with sureties, as required of the assignee, shall possess all the powers conferred on such assignee and shall be subject to all the duties hereby imposed, as fully as though named in the assignment; and in case any surety shall be discovered insufficient, or on complaint before the court or judge it should be made to appear that any assignee is guilty of wasting or misapplying the trust estate, said court or judge may direct and require additional security, and may remove such assignee, and may appoint others instead, and such person so appointed, on giving bond, shall have full power to execute such duties, and to demand and sue for all estate in the hands of the person removed, and to demand and recover the amount and value of all moneys and property or estate so wasted and misapplied, which he may neglect or refuse to make satisfaction for, from such person and his sureties. [1890 p 87 § 14; RRS § 1099. Formerly RCW 7.08.150 and 7.08.160.]

7.08.170 Discharge of assignor. Whenever it shall appear to the satisfaction of the court or judge thereof when the assignment is pending upon the final reports of the assignee chosen by the creditors or otherwise that the assignor has been guilty of no fraud in making an assignment or concealment or diversion of the property or any part thereof, in order to keep the same beyond the reach of creditors, and has acted justly and fairly in all respects; that the estate has been made to realize the fullest amount possible and that the expenses of the assignment have been paid, the judge of the court having jurisdiction of the matter shall, upon the allowance of the final account of the assignee, make an order discharging the assignor or assignors as the case may be from any further liability on account of any indebtedness existing prior to the making of such assignment, and thereafter such assignor shall be freed from any liability on account of any unsatisfied portion of the indebtedness existing prior to the making of the assignment. [1895 c 151 § 1; 1890 p 88 § 15; RRS § 1100.]

7.08.180 Sheriff disqualified from acting. That it shall be unlawful for the judge of any court of record or the creditors of an insolvent debtor to appoint the sheriff of the county receiver or assignee in any case of insolvency or assignment. [1893 c 137 § 1; RRS § 1101.]

7.08.190 Right of assignor to exemption. That hereafter any person making a general assignment for the benefit of creditors, under any statute of this state, shall have the right to claim, and have set aside to him, as

exempt from the operation of such assignment, all real and personal property which is, at the time of such assignment, exempt from levy by execution or attachment, under the laws of this state. [1897 c 6 § 1; RRS § 1102.]

7.08.200 Exemption, how claimed—Objections.

That such assignor shall, if he desires to claim the benefit of this section and RCW 7.08.190, state in such assignment, or in the inventory annexed thereto, what property he claims as exempt, giving a description thereof sufficient for identification. Any creditor of such assignor who believes any of the property so claimed as exempt is not so in fact shall have the right to make objection to such exemption claim at any time prior to the expiration of the time for presentment of claims against such assignor to his assignee. Such objection shall be made by delivering to the assignor and the assignee, and filing with the clerk of the court having jurisdiction of the assignment, a notice in writing, clearly pointing out the part or parts of such exemption claim objected to, and the ground of such objection. When the time above provided for the service and filing of objections has expired, the assignor, upon application to said court, shall have a right to the summary hearing of the said objections, and at such hearing the court shall determine and adjudge to the assignor his lawful exemptions. If any part of the exemptions claimed by the assignor shall be denied, the court shall direct the assignee to pay, out of the funds in his hands, the costs of the hearing, if any, as a part of the expenses of the assignment proceedings. The court may, at its discretion, if it find any claim made for exemption to be fraudulent and made in bad faith, deny such exemption. If no objection to the said exemption claim is served and filed prior to the expiration of the time for presentment of claims to the assignee, the assignor shall be entitled as of course to an order setting aside to him the exemptions claimed by him as aforesaid, and it shall be the duty of the assignee forthwith to deliver the same to him. [1897 c 6 § 2; RRS § 1103.]

Chapter 7.16

CERTIORARI, MANDAMUS AND PROHIBITION

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- 7.16.010 Parties, how designated.
- 7.16.020 Judgment, motion and order defined.

CERTIORARI

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Rules of court: Writ procedure superseded by RAP 2.1; special proceeding RAP 16.1 through 16.17.

Camping clubs, writ of mandamus authorized: RCW 19.105.470.

7.16.010 Parties, how designated. The party prosecuting a special proceeding may be known as the plaintiff and the adverse party as the defendant. [1895 c 65 § 1; RRS § 999.]

7.16.020 Judgment, motion and order defined. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding. [1895 c 65 § 2; RRS § 1000.]

CERTIORARI

7.16.030 Certiorari defined. The writ of certiorari may be denominated the writ of review. [1895 c 65 § 3; RRS § 1001.]

7.16.040 Grounds for granting writ. A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law. [1987 c 202 § 130; 1895 c 65 § 4; RRS § 1002.]

Intent—1987 c 202: See note following RCW 2.04.190.

7.16.050 Application for writ—Notice. The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may

grant an order to show cause why it should not be allowed, or may grant the writ without notice. [1895 c 65 § 5; RRS § 1003.]

7.16.060 Writ, to whom directed. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal the clerk, if there be one, must return the writ with the transcript required. [1895 c 65 § 6; RRS § 1004.]

7.16.070 Contents of writ. The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed. [1895 c 65 § 7; RRS § 1005.]

7.16.080 Stay of proceedings. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court, but if omitted the power of the inferior court or office is not suspended or the proceedings stayed. [1895 c 65 § 8; RRS § 1006.]

7.16.100 Service of writ. The writ may be served as follows, except where different directions respecting the mode of service thereof are given by the court granting it:

(1) Where it is directed to a person or persons by name or by his or her official title or titles, or to a municipal corporation, it must be served upon each officer or other person to whom it is directed, or upon the corporation, in the same manner as a summons.

(2) Where it is directed to a court, or to the judges of a court, having a clerk appointed pursuant to law, service upon the court or the judges thereof may be made by filing the writ with the clerk. [1895 c 65 § 10; RRS § 1008.]

7.16.110 Defective return—Further return—Hearing—Judgment. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below. [1895 c 65 § 11; RRS § 1009.]

7.16.120 Questions involving merits to be determined. The questions involving the merits to be determined by the court upon the hearing are:

(1) Whether the body or officer had jurisdiction of the subject matter of the determination under review.

(2) Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination.

(3) Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator.

(4) Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination.

(5) If there was such proof, whether there was, upon all the evidence, such a preponderance of proof, against the existence thereof, rendered in an action in a court, triable by a jury, as would be set aside by the court, as against the weight of evidence. [1957 c 51 § 6; 1895 c 65 § 12; RRS § 1010.]

7.16.130 Copy of judgment to inferior tribunal, board, or officer. A copy of the judgment signed by the clerk, must be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified up. [1895 c 65 § 13; RRS § 1011.]

7.16.140 Judgment roll. A copy of the judgment signed by the clerk, entered upon or attached to the writ and return, constitute the judgment roll. [1895 c 65 § 14; RRS § 1012.]

MANDAMUS

7.16.150 Mandamus defined. The writ of mandamus may be denominated a writ of mandate. [1895 c 65 § 15; RRS § 1013.]

7.16.160 Grounds for granting writ. It may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. [1987 c 202 § 131; 1987 c 3 § 3; 1895 c 65 § 16; RRS § 1014.]

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—1987 c 3: See note following RCW 3.46.020.

7.16.170 Absence of remedy at law required—Affidavit. The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of the party beneficially interested. [1895 c 65 § 17; RRS § 1015.]

7.16.180 Alternative or peremptory writs—Form. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ must be in some similar form, except the words requiring the party to show cause why he has not

done as commanded must be omitted and a return [day] inserted. [1895 c 65 § 18; RRS § 1016.]

7.16.190 Notice of application—No default. When the application to the court is made without notice to the party, and the writ be allowed, the alternative must be first issued; and if the application be upon due notice and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appear or not. [1895 c 65 § 19; RRS § 1017.]

7.16.200 Answer. On the return of the alternative, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action. [1895 c 65 § 20; RRS § 1018.]

7.16.210 Questions of fact, how determined. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the appellant may have sustained, in case they find for him. [1895 c 65 § 21; RRS § 1019.]

7.16.220 Applicant may demur to answer or counter-veil it by proof. On the trial the applicant is not precluded by the answer from any valid objections to its sufficiency, and may counterveil it by proof, either in direct denial or by way of avoidance. [1895 c 65 § 22; RRS § 1020.]

7.16.230 Motion for new trial, where made. The motion for new trial must be made in the court in which the issue of fact is tried. [1895 c 65 § 23; RRS § 1021.]

7.16.240 Certification of verdict—Argument. If no notice of a motion for a new trial be given, or if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial, after which either party may bring on the argument of the application, upon reasonable notice to the adverse party. [1895 c 65 § 24; RRS § 1022.]

7.16.250 Hearing. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements not affecting the substantial rights of the party, the court must proceed to hear or fix a day for

hearing the argument of the case. [1895 c 65 § 25; RRS § 1023.]

7.16.260 Judgment for damages and costs—Peremptory mandate. If judgment be given for the applicant he may recover the damages which he has sustained, as found by the jury or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate must also be awarded without delay. [1895 c 65 § 26; RRS § 1024.]

7.16.270 Service of writ. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not. [1895 c 65 § 27; RRS § 1025.]

7.16.280 Enforcement of writ—Penalty. When a temporary mandate has been issued and directed to any inferior tribunal, corporation, board or person upon whom the writ has been personally served and such tribunal, corporation, board, or person has without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal or disobedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ. [1957 c 51 § 7; 1895 c 65 § 28; RRS § 1026.]

PROHIBITION

7.16.290 Prohibition defined. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. [1895 c 65 § 29; RRS § 1027.]

7.16.300 Grounds for granting writ—Affidavit. It may be issued by any court, except district or municipal courts, to an inferior tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested. [1987 c 202 § 132; 1895 c 65 § 30; RRS § 1028.]

Intent—1987 c 202: See note following RCW 2.04.190.

7.16.310 Alternative or peremptory writs—Form. The writ must be either alternative or peremptory. The alternative writ must state generally the allegations against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, and to show

cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted. [1895 c 65 § 31; RRS § 1029.]

7.16.320 Provisions relating to mandate applicable. The provisions of this chapter relating to writ of mandate, apply to this proceeding. [1895 c 65 § 32; RRS § 1030.]

IN GENERAL

7.16.330 When writs may be made returnable. Writs of review, mandate, and prohibition issued by the supreme court, the court of appeals, or by a superior court, may, in the discretion of the court issuing the writ, be made returnable, and a hearing thereon be had at any time. [1971 c 81 § 29; 1895 c 65 § 33; RRS § 1031.]

7.16.340 Rules of practice. Except as otherwise provided in this chapter, the provisions of the code of procedure concerning civil actions are applicable to and constitute the rules of practice in the proceedings in this chapter. [1895 c 65 § 34; RRS § 1032.]

7.16.350 Appeals. From a final judgment in the superior court, in any such proceeding, an appeal shall lie to the supreme court or the court of appeals. [1971 c 81 § 30; 1895 c 65 § 35; RRS § 1033.]

Chapter 7.20 CONTEMPTS

Sections	
7.20.010	Contempt of court defined.
7.20.020	Punishment—General.
7.20.030	Contempt in presence of court—Summary punishment.
7.20.040	Procedure in other cases.
7.20.050	Production of defendant if in custody.
7.20.060	How prosecuted.
7.20.070	Execution of warrant—Bond.
7.20.080	Return of warrant—Examination of defendant.
7.20.090	Judgment and sentence.
7.20.100	Indemnity to injured party.
7.20.110	Imprisonment until act performed.
7.20.120	Offender may be indicted.
7.20.130	Alias warrant—Prosecution of bond.
7.20.140	Appeal.

Criminal contempt: Chapter 9.23 RCW.

Depositions, failure to comply: Rules of court: CR 37.

Grand juries, criminal investigations: Chapter 10.27 RCW.

Harassment—Disobedience of order—Penalties: RCW 10.14.120.

Procedures for families in conflict—Contempt: RCW 13.32A.250.

Punishment for contempt

by court, judicial officer: RCW 2.28.020, 2.28.070.

mitigates punishment for crime: RCW 9.92.040.

Supreme court, divulging results of appeal: Rules of court: SAR 12.

Testimony of adverse party, contempt: Rules of court: CR 43(f)(3).

Witnesses, compelling attendance: RCW 5.56.060 through 5.56.080.

7.20.010 Contempt of court defined. The following acts or omissions, in respect to a court of justice or proceedings therein, are deemed to be contempts of court:

(1) Disorderly, contemptuous or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings.

(2) A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding.

(3) Misbehavior in office or other wilful neglect or violation of duty by an attorney, clerk, sheriff or other person appointed or selected to perform a judicial or ministerial service.

(4) Deceit, abuse of the process or proceedings of the court by a party to an action, suit or special proceeding.

(5) Disobedience of any lawful judgment, decree, order or process of the court.

(6) Assuming to be an attorney or other officer of the court, and acting as such without authority in a particular instance.

(7) Rescuing any person or property in the lawful custody of an officer, held by such officer under an order or process of such court.

(8) Unlawfully detaining a witness or party to an action, suit or proceeding, while going to, remaining at or returning from the court where the same is for trial.

(9) Any other unlawful interference with the process or proceedings of a court.

(10) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(11) When summoned as a juror in a court, improperly conversing with a party to an action, suit or proceeding to be tried at such court, or with any other person in relation to the merits of such action, suit or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court.

(12) Disobedience by an inferior tribunal, magistrate or officer, of the lawful judgment, decree, order or process of a superior court, or proceeding in an action, suit or proceeding, contrary to law, after such action, suit or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate or officer. [Code 1881 § 725; 1877 p 147 § 730; 1869 p 167 § 667; RRS § 1049.]

7.20.020 Punishment—General. Every court of justice, and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not of those mentioned in RCW 7.20.010 (1) and (2), it must appear that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced thereby, before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars. [Code 1881 § 726; 1877 p 148 § 731; 1869 p 168 § 668; RRS § 1050.]

Punishment

court, judicial officer: RCW 2.28.020, 2.28.070.

failure of witness to attend: RCW 5.56.061.

7.20.030 Contempt in presence of court—Summary punishment. When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed. [Code 1881 § 727; 1877 p 148 § 732; 1869 p 168 § 669; RRS § 1051.]

7.20.040 Procedure in other cases. In cases other than those mentioned in RCW 7.20.030, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance. [Code 1881 § 728; 1877 p 148 § 733; 1869 p 169 § 670; RRS § 1052.]

7.20.050 Production of defendant if in custody. If the party charged be in custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody that he may answer, and he shall thereupon be produced and held until an order be made for his disposal. [Code 1881 § 729; 1877 p 149 § 734; 1869 p 169 § 671; RRS § 1053.]

7.20.060 How prosecuted. In the proceeding for a contempt, the state is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the district attorney on behalf of the state, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a co-plaintiff with the state. [Code 1881 § 730; 1877 p 149 § 735; 1869 p 169 § 672; RRS § 1054.]

7.20.070 Execution of warrant—Bond. Whenever a warrant of arrest is issued pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer and detain him until an order be made in the premises, unless the person arrested execute and deliver to the sheriff, at any time before the return day of the warrant, a bond with two sufficient sureties, to the effect that he will appear on such return day and abide the order or judgment of the court or officer thereupon. [Code 1881 § 731; 1877 p 149 § 736; 1869 p 169 § 673; RRS § 1055.]

7.20.080 Return of warrant—Examination of defendant. The sheriff shall return the warrant of arrest and the bond, if any, given him by the defendant, by the return day therein specified. When the defendant has

been brought up or appeared, the court or judicial officer shall proceed to investigate the charge by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time, if necessary. [Code 1881 § 732; 1877 p 149 § 737; 1869 p 169 § 674; RRS § 1056.]

7.20.090 Judgment and sentence. Upon the evidence so taken, the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged; and, if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter. [Code 1881 § 733; 1877 p 149 § 738; 1869 p 170 § 675; RRS § 1057.]

7.20.100 Indemnity to injured party. If any loss or injury to a party in an action, suit or proceeding prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit or proceeding by the aggrieved party for such loss or injury. [Code 1881 § 734; 1877 p 149 § 739; 1869 p 170 § 676; RRS § 1058.]

Witnesses, failure to attend, indemnity: RCW 5.56.060, 12.16.050.

7.20.110 Imprisonment until act performed. When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it, and in such case the act must be specified in the warrant of commitment. [Code 1881 § 735; 1877 p 149 § 740; 1869 p 170 § 677; RRS § 1059.]

7.20.120 Offender may be indicted. Persons proceeded against according to the provisions of this chapter, are also liable to indictment or information for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment or information, in passing sentence shall take into consideration the punishment before inflicted. [1957 c 51 § 8; Code 1881 § 736; 1877 p 150 § 741; 1869 p 170 § 678; RRS § 1060.]

Punishment for contempt mitigates punishment for crime: RCW 9.92.040.

7.20.130 Alias warrant—Prosecution of bond. When the warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the bond to be prosecuted, or both. If the bond be prosecuted and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued, shall be deemed to be recovered for such party exclusively. [Code 1881 § 737; 1877 p 150 § 742; 1869 p 170 § 679; RRS § 1061.]

7.20.140 Appeal. Either party to a judgment in a proceeding for a contempt, may appeal therefrom in like manner and with like effect as from judgment in an action, but such appeal shall not have the effect to stay the proceedings in any other action, suit or proceeding, or upon any judgment, decree or order therein, concerning which, or wherein such contempt was committed. [1984 c 258 § 70; Code 1881 § 738; 1877 p 150 § 743; 1869 p 171 § 680; RRS § 1062.]

Rules of court: Cf. RAP 2.2(a)(3).

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Chapter 7.24

UNIFORM DECLARATORY JUDGMENTS ACT

Sections

7.24.010	Authority of courts to render.
7.24.020	Rights and status under written instruments, statutes, ordinances.
7.24.030	Construction of contracts.
7.24.050	General powers not restricted by express enumeration.
7.24.060	Refusal of declaration where judgment would not terminate controversy.
7.24.070	Review.
7.24.080	Further relief.
7.24.090	Determination of issues of fact.
7.24.100	Costs.
7.24.110	Parties—City as party—Attorney general to be served, when.
7.24.120	Construction of chapter.
7.24.130	"Person" defined.
7.24.135	Severability—1935 c 113.
7.24.140	General purpose stated.
7.24.144	Short title.
7.24.146	Application of chapter—Validation of proceedings.
7.24.190	Court may stay proceedings and restrain parties.

Rules of court: Cf. CR 57.

7.24.010 Authority of courts to render. Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. [1937 c 14 § 1; 1935 c 113 § 1; RRS § 784-1.]

7.24.020 Rights and status under written instruments, statutes, ordinances. A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder. [1935 c 113 § 2; RRS § 784-2.]

7.24.030 Construction of contracts. A contract may be construed either before or after there has been a breach thereof. [1935 c 113 § 3; RRS § 784-3.]

7.24.050 General powers not restricted by express enumeration. The enumeration in RCW 7.24.020 and 7.24.030 does not limit or restrict the exercise of the general powers conferred in RCW 7.24.010, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty. [1985 c 9 § 2. Prior: 1984 c 149 § 3; 1935 c 113 § 5; RRS § 784-5.]

Purpose—Reenactment—1985 c 9: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 9 § 1.]

Severability—1985 c 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." [1985 c 9 § 4.]

Reviser's note: 1985 c 9 reenacted RCW 7.24.050 without amendment.

Short title—Application—1984 c 30: See RCW 11.02.900 and 11.02.901.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

7.24.060 Refusal of declaration where judgment would not terminate controversy. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding. [1935 c 113 § 6; RRS § 784-6.]

7.24.070 Review. All orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees. [1935 c 113 § 7; RRS § 784-7.]

7.24.080 Further relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. When the application is deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith. [1935 c 113 § 8; RRS § 784-8.]

7.24.090 Determination of issues of fact. When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions, in the court in which the proceeding is pending. [1935 c 113 § 9; RRS § 784-9.]

7.24.100 Costs. In any proceeding under this chapter, the court may make such award of costs as may seem equitable and just. [1935 c 113 § 10; RRS § 784-10.]

7.24.110 Parties—City as party—Attorney general to be served, when. When declaratory relief is sought, all persons shall be made parties who have or

claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard. [1935 c 113 § 11; RRS § 784-11.]

7.24.120 Construction of chapter. This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered. [1935 c 113 § 12; RRS § 784-12.]

7.24.130 "Person" defined. The word "person" wherever used in this chapter, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever. [1935 c 113 § 13; RRS § 784-13.]

7.24.135 Severability—1935 c 113. The several sections and provisions of this chapter, except RCW 7.24.010 and 7.24.020, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the chapter invalid or inoperative. [1935 c 113 § 14; RRS § 784-14.]

7.24.140 General purpose stated. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees. [1935 c 113 § 15; RRS § 784-15.]

7.24.144 Short title. This chapter may be cited as the Uniform Declaratory Judgments Act. [1935 c 113 § 16; RRS § 784-16.]

7.24.146 Application of chapter—Validation of proceedings. This chapter shall apply to all actions and proceedings now pending in the courts of record of the state of Washington seeking relief under the terms of the uniform declaratory judgments act [this chapter]; and all judgments heretofore rendered; and all such actions and proceedings heretofore instituted and now pending in said courts of record of the state of Washington, seeking such relief, are hereby validated, and the respective courts of record in said actions shall have jurisdiction and power to proceed in said actions and to declare the rights, status and other legal relations sought to have been declared in said pending actions and proceedings in accordance with the provisions of said chapter. [1937 c 14 § 2; RRS § 784-17.]

7.24.190 Court may stay proceedings and restrain parties. The court, in its discretion and upon such conditions and with or without such bond or other security as it deems necessary and proper, may stay any ruling, order, or any court proceedings prior to final judgment or decree and may restrain all parties involved in order to secure the benefits and preserve and protect the rights of all parties to the court proceedings. [1965 c 131 § 1.]

Rules of court: CR 57.

Chapter 7.25

DECLARATORY JUDGMENTS OF LOCAL BOND ISSUES

Sections	
7.25.010	Validity of bond issues may be tested.
7.25.020	Complaint—Defendants—Service—Intervention—Attorney's fee.
7.25.030	Judgment as to validity of all or part of bond issue—Effect.
7.25.040	Other declaratory judgment provisions applicable.

Local bond issues generally: Title 39 RCW.

7.25.010 Validity of bond issues may be tested. Whenever the legislative or governing body of any county, city, school district, other municipal corporation, taxing district, or any agency, instrumentality, or public corporation thereof shall desire to issue bonds of any kind and shall have passed an ordinance or resolution authorizing the same, the validity of such proposed bond issue may be tested and determined in the manner provided in this chapter. [1983 c 263 § 1; 1939 c 153 § 1; RRS § 5616-11. Formerly RCW 7.24.150.]

7.25.020 Complaint—Defendants—Service—Intervention—Attorney's fee. A complaint shall be prepared and filed in the superior court by such county, city, school district, other municipal corporation, taxing district, or agency, instrumentality, or public corporation thereof setting forth such ordinance or resolution and that it is the purpose of the plaintiff to issue and sell bonds as stated therein and that it is desired that the right of the plaintiff to so issue such bonds and sell the same shall be tested and determined in said action. In said action all taxpayers of such taxing district shall be deemed to be defendants and shall be named in the title of said action as defendants with the words "The Taxpayers of _____ (naming the taxing district), Defendants." Upon the filing of the complaint the court shall, upon the application of the plaintiff, enter an order naming one or more taxpayers of such taxing district upon whom service in said action shall be made as the representative of all taxpayers of said district, except such as may intervene as herein provided, and in such case the court shall fix and allow a reasonable attorney's fee in said action to the attorney who shall represent the representative taxpayer or taxpayers as aforesaid, and such fee and all taxable costs incurred by such representative taxpayer or taxpayers shall be taxed as costs against the plaintiff: *Provided*, That if the taxpayer or taxpayers appointed by the court shall default, the court

shall appoint an attorney who shall defend said action on behalf of all taxpayers, and such attorney shall be allowed a reasonable fee and taxable costs to be taxed against the plaintiff: *Provided further*, That any taxpayer may intervene in such action and be represented therein by his own attorney. [1983 c 263 § 2; 1939 c 153 § 2; RRS § 5616-12. Formerly RCW 7.24.160.]

7.25.030 Judgment as to validity of all or part of bond issue—Effect. The court in such action shall enter its judgment determining whether or not the bonds as proposed will be valid, and if the court finds that a portion, but not all, of the said bond issue is authorized by law, the court shall so declare, and find by its judgment what portion of such bond issue will be valid, and the judgment in said action shall be binding upon all taxpayers. [1939 c 153 § 3; RRS § 5616-13. Formerly RCW 7.24.170.]

7.25.040 Other declaratory judgment provisions applicable. Except as otherwise herein provided, all the provisions of the laws of Washington relating to declaratory judgments shall apply to the action herein provided for. The remedy herein provided shall be in addition to other remedies now provided by law. [1939 c 153 § 4; RRS § 5616-14. Formerly RCW 7.24.180.]

Uniform Declaratory Judgments Act: Chapter 7.24 RCW.

Chapter 7.28

EJECTMENT, QUIETING TITLE

Sections

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Forcible and unlawful entry, detainer: Chapters 59.12, 59.16 RCW.

Liens: Title 60 RCW.

Real property: Title 64 RCW.

Rent default, less than forty dollars: Chapter 59.08 RCW.

Tenancies: Chapter 59.04 RCW.

7.28.010 Who may maintain actions—Service on nonresident defendant. Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court. [1911 c 83 § 1; 1890 c 72 § 1; Code 1881 § 536; 1879 p 134 § 1; 1877 p 112 §

540; 1869 p 128 § 488; 1854 p 205 § 398; RRS § 785. Formerly RCW 7.28.010, 7.28.020, 7.28.030 and 7.28.040.]

Process, publication, etc.: Chapter 4.28 RCW.

Publication of legal notices: Chapter 65.16 RCW.

7.28.050 Limitation of actions for recovery of real property—Adverse possession under title deducible of record. That all actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual, open and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer, or other person authorized by the laws of this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid, but when the possessor shall acquire title after taking such possession, the limitation shall begin to run from the time of acquiring title. [1893 c 11 § 1; RRS § 786.]

7.28.060 Rights inhere to heirs, devisees and assigns. The heirs, devisees and assigns of the person having such title and possession shall have the same benefit of RCW 7.28.050 as the person from whom the possession is derived. [1893 c 11 § 2; RRS § 787.]

7.28.070 Adverse possession under claim and color of title—Payment of taxes. Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section. [1893 c 11 § 3; RRS § 788.]

7.28.080 Color of title to vacant and unoccupied land. Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section: *Provided, however,* If any person having a better paper title to said vacant and unoccupied land shall, during the

said term of seven years, pay the taxes as assessed on said land for any one or more years of said term of seven years, then and in that case such taxpayer, his heirs or assigns, shall not be entitled to the benefit of this section. [1893 c 11 § 4; RRS § 789.]

7.28.090 Adverse possession—Public lands—Adverse title in infants, etc. RCW 7.28.070 and 7.28.080 shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is a person under eighteen years of age, or incompetent within the meaning of RCW 11.88.010: *Provided,* Such persons as aforesaid shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land shall, within the time last aforesaid, pay to the person or persons who have paid the same for his or her betterments, and the taxes, with interest on said taxes at the legal rate per annum that have been paid on said vacant and unimproved land. [1977 ex.s. c 80 § 7; 1971 ex.s. c 292 § 7; 1893 c 11 § 5; RRS § 790.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

7.28.100 Construction. That the provisions of RCW 7.28.050 through 7.28.100 shall be liberally construed for the purposes set forth in those sections. [1893 c 11 § 6; RRS § 791.]

7.28.110 Substitution of landlord in action against tenant. A defendant who is in actual possession may, for answer, plead that he is in possession only as a tenant of another, naming him and his place of residence, and thereupon the landlord, if he applies therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord does not apply to be made defendant within the time the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe. [Code 1881 § 537; 1877 p 112 § 541; 1869 p 128 § 489; RRS § 792.]

7.28.120 Pleadings—Superior title prevails. The plaintiff in such action shall set forth in his complaint the nature of his estate, claim or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession

thereof to be delivered if a recovery be had. [Code 1881 § 538; 1879 p 134 § 2; 1877 p 113 § 542; 1869 p 128 § 490; RRS § 793.]

7.28.130 Defendant must plead nature of his estate or right to possession. The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant, the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him. [Code 1881 § 539; 1877 p 113 § 543; 1869 p 129 § 491; RRS § 794.]

7.28.140 Verdict of jury. The jury by their verdict shall find as follows:

(1) If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest, in either, as the case may be.

(2) If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded. [Code 1881 § 540; 1877 p 113 § 544; 1869 p 129 § 492; RRS § 795.]

Rules of court: CR 49.

General, special verdicts: RCW 4.44.410 through 4.44.440.

7.28.150 Damages—Limitation—Permanent improvements. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a setoff against such damages. [Code 1881 § 541; 1877 p 113 § 545; 1869 p 129 § 493; RRS § 796.]

Reviser's note: Compare the last sentence of this section with RCW 7.28.160 through 7.28.180.

7.28.160 Defendant's counterclaim for permanent improvements and taxes paid. In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counterclaim to the defendant. [1903 c 137 § 1; RRS § 797.]

7.28.170 Defendant's counterclaim for permanent improvements and taxes paid—Pleadings, issues and trial on counterclaim. The counterclaim shall set forth the value of the land apart from the improvements, and the nature and value of the improvements apart from the land and the amount of said taxes and assessments so paid, and the date of payment. Issues shall be joined and tried as in other actions, and the value of the land and the amount of said taxes and assessments apart from the improvements, and the value of the improvements apart from the land must be specifically found by the verdict of the jury, report of the referee, or findings of the court as the case may be. [1903 c 137 § 2; RRS § 798.]

7.28.180 Defendant's counterclaim for permanent improvements and taxes paid—Judgment on counterclaim—Payment. If the judgment be in favor of the plaintiff for the recovery of the realty, and of the defendant upon the counterclaim, the plaintiff shall be entitled to recover such damages as he may be found to have suffered through the withholding of the premises and waste committed thereupon by the defendant or those under whom he claims, but against this recovery shall be offset pro tanto the value of the permanent improvements and the amount of said taxes and assessments with interest found as above provided. Should the value of improvements or taxes or assessments with interest exceed the recovery for damages, the plaintiff, shall, within two months, pay to the defendant the difference between the two sums and upon proof, after notice, to the defendant, that this has been done, the court shall make an order declaring that fact, and that title to the improvements is vested in him. Should the plaintiff fail to make such payment, the defendant may at any time within two months after the time limited for such payment to be made, pay to the plaintiff the value of the land apart from the improvements, and the amount of the damages awarded against him, and he thereupon shall be vested with title to the land, and, after notice to the plaintiff, the court shall make an order reciting the fact and adjudging title to be in him. Should neither party make the payment above provided, within the specified time, they shall be deemed to be tenants in common of the premises, including the improvements, each holding an interest proportionate to the value of his property determined in the manner specified in RCW 7.28.170: *Provided*, That the interest of the owner of the improvements shall be the difference between the value

of the improvements and the amount of damages recovered against him by the plaintiff. [1903 c 137 § 3; RRS § 799.]

7.28.190 Verdict where plaintiff's right to possession expires before trial. If the right of the plaintiff to the possession of the property expire, after the commencement of the action and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages. [Code 1881 § 542; 1877 p 114 § 546; 1869 p 130 § 494; RRS § 800.]

7.28.200 Order for survey of property. The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof, for the purposes of the action. [Code 1881 § 543; 1877 p 114 § 547; 1869 p 130 § 495; RRS § 801.]

7.28.210 Order for survey of property—Contents of order—Service. The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement; but if any unnecessary injury be done to the premises, he shall be liable therefor. [Code 1881 § 544; 1877 p 114 § 548; 1869 p 130 § 496; RRS § 802.]

7.28.220 Alienation by defendant, effect of. An action for the recovery of the possession of real property against a person in possession, cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant do not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser. [Code 1881 § 545; 1877 p 114 § 549; 1869 p 130 § 497; RRS § 803.]

7.28.230 Mortgagee cannot maintain action for possession—Possession to collect mortgaged, pledged or assigned rents and profits. (1) A mortgage of any interest in real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law: *Provided*, That nothing in this section shall be construed as any limitation upon the right of the owner of real property to mortgage, pledge or assign the rents and profits thereof, nor as prohibiting the mortgagee, pledgee or assignee of such rents and profits, or any trustee under a mortgage or trust deed either contemporaneously or upon the happening of a future event of default, from entering into possession of any real property, other than farm lands or the homestead of the mortgagor or his successor in interest, for the purpose of collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of

equity to appoint a receiver to take charge of such real property and collect such rents and profits thereof for application in accordance with the terms of such mortgage, trust deed or assignment.

(2) Until paid, the rents and profits of real property constitute real property for the purposes of mortgages, trust deeds or assignments whether or not said rents and profits have accrued. The provisions of RCW 65.08.070 as now or hereafter amended shall be applicable to such rents and profits, and such rents and profits are excluded from Article 62A.9 RCW. [1969 ex.s. c 122 § 1; Code 1881 § 546; 1877 p 114 § 550; 1869 p 130 § 498; RRS § 804.]

7.28.240 Action between cotenants. In an action by a tenant in common, or a joint tenant of real property against his cotenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right or did some act amounting to such denial. [Code 1881 § 547; 1877 p 114 § 551; 1869 p 130 § 499; RRS § 805.]

7.28.250 Action against tenant on failure to pay rent. When in the case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to reenter for such failure; he may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a reentry upon the property. But if at any time before the judgment in such action, the lessee or his successor in interest as to the whole or a part of the property, pay to the plaintiff, or bring into court the amount of rent then in arrear, with interest and cost of action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease. [Code 1881 § 548; 1877 p 114 § 552; 1869 p 131 § 500; No RRS.]

Forcible entry, detainer: Chapter 59.12 RCW.

Rent default, less than forty dollars: Chapter 59.08 RCW.

Tenancies: Chapter 59.04 RCW.

7.28.260 Effect of judgment—Lis pendens—Vacation. In an action to recover possession of real property, the judgment rendered therein shall be conclusive as to the estate in such property and the right of possession thereof, so far as the same is thereby determined, upon all persons claiming by, through, or under the party against whom the judgment is rendered, by title or interest passing after the commencement of the action, if the party in whose favor the judgment is rendered shall have filed a notice of the pendency of the action as required by RCW 4.28.320. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order, vacating the judgment and granting him a new trial, upon the payment of the costs of the action. [1909 c 35 § 1; Code 1881 § 549; 1877 p 114 § 553; 1869 p 131 § 501; RRS § 806.]

Rules of court: Cf. CR 58, 60(e).

New trials: Chapter 4.76 RCW.

Vacation of judgments: Chapter 4.72 RCW.

7.28.270 Effect of vacation of judgment. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in RCW 7.28.260, such possession shall not be thereby affected in any way; and if judgment be given for defendant in the new trial, he shall be entitled to restitution by execution in the same manner as if he were plaintiff. [Code 1881 § 550; 1877 p 115 § 554; 1869 p 131 § 502; RRS § 807.]

Rules of court: Cf. CR 58, 60(e).

7.28.280 Conflicting claims, donation law, generally—Joinder of parties. In an action at law, for the recovery of the possession of real property, if either party claims the property as a donee of the United States, and under the act of congress approved September 27th, 1850, commonly called the "Donation law," or the acts amendatory thereof, such party, from the date of his settlement thereon, as provided in said act, shall be deemed to have a legal estate in fee, in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property, by virtue of settlement, under such acts, such settlement and performance of the subsequent condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate, or patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession, by himself or his tenant, of real property, and any private or municipal corporation in possession by itself or its tenant of any real property, or when such real property is not in the actual possession of anyone, any person or private or municipal corporation claiming title to any real property under a patent from the United States, or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations or associations claiming an interest in said real property or any part thereof, or any right thereto adverse to him, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations are in possession of, or claim as aforesaid, separate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels, by any other person, persons, corporations or associations, arising out of a question, conveyance, statute, grant, or other matter common to all such parcels of real estate, all or any portion of such persons or corporations so in possession, or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons, corporations or associations claiming such adverse interest. [Code 1881 § 551; 1877

p 116 § 556; 1869 p 132 § 504; RRS §§ 808, 809. Formerly RCW 7.28.280 and 7.28.290.]

7.28.300 Quieting title against outlawed mortgage. The record owner of real estate may maintain an action to quiet title against the lien of a mortgage on the real estate where an action to foreclose such mortgage would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such mortgage lien. [1937 c 124 § 1; RRS § 785-1.]

Limitation of actions, generally: Chapter 4.16 RCW.

Real estate mortgages, foreclosure: Chapter 61.12 RCW.

7.28.310 Quieting title to personal property. Any person or corporation claiming to be the owner of or interested in any tangible or intangible personal property may institute and maintain a suit against any person or corporation also claiming title to or any interest in such property for the purpose of adjudicating the title of the plaintiff to such property, or any interest therein, against any and all adverse claims; removing all such adverse claims as clouds upon the title of the plaintiff and quieting the title of the plaintiff against any and all such adverse claims. [1929 c 100 § 1; RRS § 809-1.]

7.28.320 Possession no defense. The fact that any person or corporation against whom such action may be brought is in the possession of such property, or evidence of title to such property, shall not prevent the maintenance of such suit. [1929 c 100 § 2; RRS § 809-2.]

Chapter 7.36

HABEAS CORPUS

Sections

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Rules of court: RAP 16.3 through 16.15.

7.36.010 Who may prosecute writ. Every person restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal. [Code 1881 § 666; 1877 p 138 § 669; 1869 p 156 § 606; 1854 p 212 § 434; RRS § 1063.]

7.36.020 Parents, guardians, etc., may act for persons under disability. Writs of habeas corpus shall be granted in favor of parents, guardians, limited guardians where appropriate, spouses, and next of kin, and to enforce the rights, and for the protection of infants and incompetent or disabled persons within the meaning of RCW 11.88.010; and the proceedings shall in all cases conform to the provisions of this chapter. [1977 ex.s. c 80 § 8; 1973 1st ex.s. c 154 § 17; Code 1881 § 688; 1877 p 141 § 692; 1869 p 159 § 628; 1854 p 214 § 456; RRS § 1064.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

7.36.030 Petition—Contents. Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

(1) By whom the petitioner is restrained of his liberty, and the place where, (naming the parties if they are known, or describing them if they are not known).

(2) The cause or pretense of the restraint according to the best of the knowledge and belief of the applicant.

(3) If the restraint be alleged to be illegal, in what the illegality consists. [Code 1881 § 667; 1877 p 138 § 670; 1869 p 156 § 607; 1854 p 212 § 435; RRS § 1065.]

7.36.040 Who may grant writ. Writs of habeas corpus may be granted by the supreme court, the court of appeals, or superior court, or by any judge of such courts, and upon application the writ shall be granted without delay. [1971 c 81 § 31; 1957 c 9 § 10; Code 1881 § 668; 1877 p 138 § 671; 1869 p 156 § 608; 1854 p 212 § 436; RRS § 1066.]

Rules of court: Cf. RAP 16.3, 18.22.

7.36.050 To whom directed—Contents. The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court or judge at such time and place as the court or judge shall direct to do and receive what shall be ordered concerning him, and have then and there the writ. [Code 1881 § 669; 1877 p 138 § 672; 1869 p 156 § 609; 1854 p 212 § 437; RRS § 1067.]

7.36.060 Delivery to sheriff if to him directed. If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay. [Code 1881 § 670; 1877 p 138 § 673; 1869 p 156 § 610; 1854 p 212 § 438; RRS § 1068.]

7.36.070 Service by sheriff if directed to another. If the writ be directed to any other person, it shall be delivered to the sheriff and shall be by him served by delivering the same to such person without delay. [Code 1881 § 671; 1877 p 139 § 674; 1869 p 156 § 611; 1854 p 212 § 430; RRS § 1069.]

7.36.080 Service when person not found. If the person to whom such writ is directed cannot be found or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by posting the same on [in] some conspicuous place, either of [on] his dwelling house or where the party is confined or under restraint. [Code 1881 § 672; 1877 p 139 § 675; 1869 p 157 § 612; 1854 p 212 § 440; RRS § 1070.]

7.36.090 Return—Attachment for refusal. The sheriff or other person to whom the writ is directed shall make immediate return thereof, and if he refuse after due service to make return, the court shall enforce obedience by attachment. [Code 1881 § 673; 1877 p 139 § 676; 1869 p 157 § 613; 1854 p 213 § 441; RRS § 1071.]

7.36.100 Form of return—Production of person. The return must be signed and verified by the person making it, who shall state:

(1) The authority or cause of the restraint of the party in his custody.

(2) If the authority shall be in writing, he shall return a copy and produce the original on the hearing.

(3) If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer. He shall produce the party at the hearing unless prevented by sickness or infirmity, which must be shown in the return. [Code 1881 § 674; 1877 p 139 § 677; 1869 p 157 § 614; 1854 p 213 § 442; RRS § 1072.]

7.36.110 Procedure—Pleadings—Amendment. The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in evidence. The new matter shall be verified, except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing a delay. [Code 1881 § 675; 1877 p 139 § 678; 1869 p 157 § 615; 1854 p 213 § 443; RRS § 1073.]

7.36.120 Hearing—Determination. The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuation thereof, shall discharge the party. [Code 1881 § 676; 1877 p 139 § 679; 1869 p 157 § 616; 1854 p 213 § 444; RRS § 1074.]

Rules of court: ER 1101.

7.36.130 Limitation upon inquiry. No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired, in either of the cases following:

(1) Upon any process issued on any final judgment of a court of competent jurisdiction except where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated.

(2) For any contempt of any court, officer or body having authority in the premises to commit; but an order of commitment, as for a contempt upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications.

(3) Upon a warrant issued from the superior court upon an indictment or information. [1947 c 256 § 3; 1891 c 43 § 1; Code 1881 § 677; 1869 p 157 § 617; 1854 p 213 § 445; Rem. Supp. 1947 § 1075.]

7.36.140 Duty of courts when federal question is raised. In the consideration of any petition for a writ of habeas corpus by the supreme court or the court of appeals, whether in an original proceeding or upon an appeal, if any federal question shall be presented by the pleadings, it shall be the duty of the supreme court to determine in its opinion whether or not the petitioner has been denied a right guaranteed by the Constitution of the United States. [1971 c 81 § 32; 1947 c 256 § 2; Rem. Supp. 1947 § 1085-2.]

7.36.150 Admission to bail or discharge—Duty of court. No person shall be discharged from an order of commitment issued by any judicial or peace officer for want of bail, or in cases not bailable on account of any defect in the charge or process, or for alleged want of probable cause; but in all cases the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, admit to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper. [Code 1881 § 678; 1877 p 140 § 681; 1869 p 157 § 618; 1854 p 213 § 446; RRS § 1076.]

7.36.160 Writ to admit prisoner to bail. The writ may be had for the purpose of admitting a prisoner to bail in civil and criminal actions. When any person has an interest in the detention, and the prisoner shall not be discharged until the person having such interest is notified. [Code 1881 § 679; 1877 p 140 § 682; 1869 p 158 § 619; 1854 p 214 § 447; RRS § 1077.]

7.36.170 Compelling attendance of witnesses. The court or judge shall have power to require and compel the attendance of witnesses, and to do all other acts necessary to determine the case. [Code 1881 § 680; 1877 p 140 § 683; 1869 p 158 § 620; 1854 p 214 § 448; RRS § 1078.]

Witnesses, compelling attendance: Chapter 5.56 RCW.

7.36.180 Officers protected from civil liability. No sheriff or other officer shall be liable to a civil action for

obeying any writ of habeas corpus or order of discharge made thereon. [Code 1881 § 681; 1877 p 140 § 684; 1869 p 158 § 621; 1854 p 214 § 449; RRS § 1079.]

7.36.190 Warrant to prevent removal. Whenever it shall appear by affidavit that any one is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the court or judge to be dealt with according to the law. [Code 1881 § 682; 1877 p 140 § 685; 1869 p 158 § 622; 1854 p 214 § 450; RRS § 1080.]

7.36.200 Warrant may call for apprehension of offending party. The court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint. [Code 1881 § 683; 1877 p 141 § 687; 1869 p 159 § 623; 1854 p 214 § 451; RRS § 1081.]

7.36.210 Execution of warrant. The officer shall execute the writ [warrant] by bringing the person therein named before the court or judge, and the like return of proceedings shall be required and had as in case of writs of habeas corpus. [Code 1881 § 684; 1877 p 141 § 688; 1869 p 159 § 624; 1854 p 214 § 452; RRS § 1082.]

7.36.220 Temporary orders. The court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained may be changed from one person to another, by order of the court or judge. [Code 1881 § 685; 1877 p 141 § 689; 1869 p 159 § 625; 1854 p 214 § 453; RRS § 1083.]

7.36.230 Emergency acts on Sunday authorized. Any writ or process authorized by this chapter may be issued and served, in cases of emergency, on Sunday. [Code 1881 § 686; 1877 p 141 § 690; 1869 p 159 § 626; 1854 p 214 § 454; RRS § 1084.]

Superior court, issuance of habeas corpus on nonjudicial days: State Constitution Art. 4 § 6 (Amendment 28).

7.36.240 Writs and process—Issuance—Service—Defects—Amendments. All writs and other process authorized by this chapter shall be issued by the clerk of the court, and sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed and temporary commitments when necessary. [Code 1881 § 687; 1877 p 141 § 691; 1869 p 159 § 627; 1854 p 214 § 455; RRS § 1085.]

7.36.250 Proceeding in forma pauperis. Any person entitled to prosecute a writ of habeas corpus who, by reason of poverty is unable to pay the costs of such proceeding or give security therefor, may file in the court having original jurisdiction of the proceeding an affidavit setting forth such facts and that he believes himself to be entitled to the redress sought. Upon the filing of such an affidavit the court may, if satisfied that the proceeding or appeal is instituted or taken in good faith, order that such proceeding, including appeal, may be prosecuted without prepayment of fees or costs or the giving of security therefor. [1947 c 256 § 1; Rem. Supp. 1947 § 1085-1.]

Rules of court: RAP 16.15(f), 16.15(g).

Chapter 7.40 INJUNCTIONS

Sections

7.40.010	Who may grant restraining orders and injunctions.
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7.40.030	Malicious erection of structure may be enjoined.
7.40.040	Time of granting.
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7.40.170	Bond for appearance.
7.40.180	Motion to dissolve or modify.
7.40.190	Damages on dissolution of injunction to stay judgment.
7.40.200	Damages for rents and waste.
7.40.210	Motion to reinstate.

Rules of court: Cf. CR 65, 52(a)(2)(A).

Camping clubs, relating to: RCW 19.105.470, 19.105.490.

Injunctions in labor disputes: Chapter 49.32 RCW.

Term papers, theses, dissertations, sale of prohibited—Injunctions: RCW 28B.10.584.

7.40.010 Who may grant restraining orders and injunctions. Restraining orders and injunctions may be granted by the superior court, or by any judge thereof. [1957 c 9 § 11; Code 1881 § 153; 1877 p 32 § 153; 1869 p 38 § 151; 1854 p 152 § 111; RRS § 718.]

7.40.020 Grounds for issuance. When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual; or where

such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property. [Code 1881 § 154; 1877 p 33 § 154; 1869 p 38 § 152; 1854 p 152 § 112; RRS § 719.]

7.40.030 Malicious erection of structure may be enjoined. An injunction may be granted to restrain the malicious erection, by any owner or lessee of land, of any structure intended to spite, injure or annoy an adjoining proprietor. And where any owner or lessee of land has maliciously erected such a structure with such intent, a mandatory injunction will lie to compel its abatement and removal. [1883 p 44 § 1, part; Code 1881 § 154 1/2; RRS § 720.]

7.40.040 Time of granting. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment in that proceeding. [Code 1881 § 155; 1877 p 33 § 155; 1869 p 39 § 153; 1854 p 153 § 113; RRS § 721.]

7.40.050 Notice—Restraining orders in emergencies. No injunction shall be granted until it shall appear to the court or judge granting it, that some one or more of the opposite party concerned, has had reasonable notice of the time and place of making application, except that in cases of emergency to be shown in the complaint, the court may grant a restraining order until notice can be given and hearing had thereon. [Code 1881 § 156; 1877 p 33 § 156; 1869 p 39 § 154; 1854 p 153 § 114; RRS § 722.]

Rules of court: CR 52(a)(2)(A), 65.

7.40.060 Affidavits at hearing. On the hearing of an application for an injunction, each party may read affidavits. [Code 1881 § 157; 1877 p 33 § 157; 1869 p 39 § 155; 1854 p 153 § 115; RRS § 723.]

Rules of court: CR 65.

7.40.070 Terms and conditions may be imposed. Upon the granting or continuing an injunction, such terms and conditions may be imposed upon the party obtaining it as may be deemed equitable. [Code 1881 § 158; 1877 p 33 § 158; 1869 p 39 § 156; 1854 p 153 § 116; RRS § 724.]

Rules of court: Cf. CR 65(d).

7.40.080 Injunction bond. No injunction or restraining order shall be granted until the party asking it shall enter into a bond, in such a sum as shall be fixed by the

court or judge granting the order, with surety to the satisfaction of the clerk of the superior court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify as provided by law, and until they so justify, the clerk shall be responsible for their sufficiency. [1957 c 51 § 9; Code 1881 § 159; 1877 p 33 § 159; 1869 p 39 § 157; 1854 p 153 § 117; RRS § 725.]

Rules of court: Cf. CR 65(c).

Corporate surety—Insurance: Chapter 48.28 RCW.

7.40.085 Injunction bonds for injunctions affecting public construction contracts. In determining the amount of the bond required by RCW 7.40.080 as now or hereafter amended, with respect to an injunction or restraining order that will delay or enjoin a notice to proceed or the performance of work under a construction contract for a public contracting body among the factors regarded in the exercise of its discretion, the court shall consider:

(1) All costs and liquidated damages provided for in the contract or otherwise that may result from such delay;

(2) The probable costs to the public in terms of inconvenience, delayed use of the proposed facilities, and escalation of costs of delayed construction of the proposed facilities that may be incurred as a result of a delay subsequently found to be without good cause; and

(3) The procedures for consideration of objections to proposed construction and the opportunity the one seeking the injunction had for objecting prior to the letting of the contract. [1974 ex.s. c 153 § 1.]

7.40.090 Bond for injunction after temporary restraining order. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second bond, unless the former shall be deemed insufficient, but the plaintiff and his surety shall remain liable upon his original bond. [Code 1881 § 160; 1877 p 33 § 160; 1869 p 39 § 158; 1854 p 153 § 118; RRS § 726.]

Rules of court: Cf. CR 65(c).

7.40.100 Copy of order serves as writ. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order of injunction duly certified by him, which shall be forthwith served by delivering the same to the adverse party. [Code 1881 § 161; 1877 p 33 § 161; 1869 p 39 § 159; 1854 p 153 § 119; RRS § 727.]

7.40.110 Stay of judgment—Release of errors. In application to stay proceedings after judgment, the plaintiff shall endorse upon his complaint a release of errors in the judgment whenever required to do so by the judge or court. [Code 1881 § 162; 1877 p 33 § 162; 1869 p 39 § 160; 1854 p 153 § 120; RRS § 728.]

7.40.120 Injunction, who is bound by. An order of injunction shall bind every person and officer restrained from the time he is informed thereof. [Code 1881 § 163;

1877 p 33 § 163; 1869 p 40 § 161; 1854 p 153 § 121; RRS § 729.]

7.40.130 When adverse party becomes bound. When notice of the application for an injunction has been served upon the adverse party, it shall not be necessary to serve the order upon him, but he shall be bound by the injunction as soon as the bond required of the plaintiff is executed and delivered to the proper officer. [Code 1881 § 164; 1877 p 34 § 164; 1869 p 40 § 162; 1854 p 154 § 122; RRS § 730.]

7.40.140 Disposition of money collected on enjoined judgment. Money collected upon a judgment afterward enjoined, remaining in the hands of the collecting officer, shall be paid to the clerk of the court granting the injunction, subject to the order of the court. [Code 1881 § 165; 1877 p 34 § 165; 1869 p 40 § 163; 1854 p 154 § 123; RRS § 731.]

7.40.150 Contempt for disobedience. Whenever it shall appear to any court granting a restraining order or an order of injunction, or by affidavit, that any person has wilfully disobeyed the order after notice thereof, such court shall award an attachment for contempt against the party charged, or an order to show cause why it should not issue. The attachment or order shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him. [1957 c 9 § 12; Code 1881 § 166; 1877 p 34 § 166; 1869 p 40 § 164; 1854 p 154 § 124; RRS § 732.]

7.40.160 Attachment and arrest—Indemnity of plaintiff. The attachment for contempt shall be immediately served, by arresting the party charged, and bringing him into court, if in session, to be dealt with as in other cases of contempt; and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises. [Code 1881 § 167; 1877 p 34 § 167; 1869 p 40 § 165; 1854 p 154 § 125; RRS § 733.]

7.40.170 Bond for appearance. If the court is not in session the officer making the arrest shall cause the person to enter into a bond, with surety, to be approved by the officer, conditioned that he personally appear in open court whenever his appearance shall be required, to answer such contempt, and that he will pay to the plaintiff all his damages and costs occasioned by the breach of the order; and in default thereof he shall be committed to the jail of the county until he shall enter into such bond with surety, or be otherwise legally discharged. [1891 c 56 § 1; Code 1881 § 168; 1877 p 34 § 168; 1869 p 40 § 166; 1854 p 154 § 126; RRS § 734.]

7.40.180 Motion to dissolve or modify. Motions to dissolve or modify injunctions may be made in open court, or before a judge of the superior court, at any time after reasonable notice to the adverse party. [1891 c 36 § 1; Code 1881 § 169; 1877 p 34 § 169; 1869 p 40 § 167; 1854 p 154 § 127; RRS § 735.]

Rules of court: CR 65.

7.40.190 Damages on dissolution of injunction to stay judgment. When an injunction to stay proceedings after judgment for debt or damages shall be dissolved, the court shall award such damages not exceeding ten percent on the judgment, as the court may deem right, against the party in whose favor the injunction issued. [Code 1881 § 170; 1877 p 34 § 170; 1869 p 41 § 168; 1854 p 154 § 128; RRS § 736.]

7.40.200 Damages for rents and waste. If an injunction to stay proceedings after verdict or judgment in an action for the recovery of real estate, or the possession thereof, be dissolved, the damages assessed against the party obtaining the injunction, shall include the reasonable rents and profits of the lands recovered, and all waste committed after granting injunction. [Code 1881 § 171; 1877 p 35 § 171; 1869 p 41 § 169; 1854 p 154 § 129; RRS § 737.]

7.40.210 Motion to reinstate. Upon an order being made dissolving or modifying an order of injunction, the plaintiff may move the court to reinstate the order, and the court may, in its discretion, allow the motion, and appoint a time for hearing the same before the court, or a time and place for hearing before some judge thereof, and upon the hearing, the parties may produce such additional affidavits or depositions as the court shall direct, and the order of injunction shall be dissolved, modified, or reinstated, as the court or judge may deem right. Until the hearing of the motion to reinstate the order of injunction, the order to dissolve or modify it, shall be suspended. [Code 1881 § 172; 1877 p 35 § 172; 1869 p 41 § 170; 1854 p 154 § 130; RRS § 738.]

Chapter 7.42

INJUNCTIONS—OBSCENE MATERIALS

Sections

7.42.010	Obscene prints and articles—Jurisdiction to enjoin.
7.42.020	Injunction authorized.
7.42.030	Trial by jury—Judgment.
7.42.040	Matter to be surrendered to sheriff—Seizure, destruction.
7.42.050	Prosecuting attorney need not file undertaking prior to order—Nonliability.
7.42.060	Knowledge of contents chargeable after service.
7.42.070	Exemptions.
7.42.900	Severability—1959 c 105.

Rules of court: Cf. CR 65.

Crimes, obscenity: Chapter 9.68 RCW.

Criminal procedure, sufficiency of indictment, information for obscene literature: RCW 10.37.130.

7.42.010 Obscene prints and articles—Jurisdiction to enjoin. The superior courts shall have jurisdiction to enjoin the sale or distribution of obscene prints and articles as hereinafter specified. [1959 c 105 § 1.]

7.42.020 Injunction authorized. The prosecuting attorney of every county of the state, in which a person,

firm, or corporation sells or distributes or offers to sell or distribute or has in his possession with intent to sell or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, newspaper, phonograph record, magnetic tape, electric or mechanical transcription, picture, drawing, photograph, figure, image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy or indecent, or which contains an article or instrument of indecent use or purports to be for indecent use or purpose, may maintain an action in the name of the state for an injunction against such person, firm, or corporation in the superior court to prevent the sale or further sale or the distribution or further distribution or the acquisition or possession of any book, magazine, pamphlet, comic book, story paper, writing, paper, newspaper, phonograph record, magnetic tape, electric or mechanical transcription, picture, drawing, photograph, figure or image or any written or printed matter of indecent character, herein described. [1959 c 105 § 2.]

7.42.030 Trial by jury—Judgment. The person, firm, or corporation sought to be enjoined shall be entitled to a trial by jury of the issues within a reasonable time after joinder of issue and a judgment shall be entered by the court within two days of the conclusion of the trial. No injunction or restraining order shall be issued prior to the conclusion of the trial. [1959 c 105 § 3.]

7.42.040 Matter to be surrendered to sheriff—Seizure, destruction. In the event that a final order or judgment of injunction be entered in favor of the state and against the person, firm, or corporation sought to be enjoined, such final order or judgment shall contain a provision directing the person, firm, or corporation to surrender to the sheriff of the county in which the action was brought any of the matter described in RCW 7.42.020, and each sheriff shall be directed to seize and destroy the same. [1959 c 105 § 4.]

7.42.050 Prosecuting attorney need not file undertaking prior to order—Nonliability. In any action brought as herein provided, the prosecuting attorney shall not be required to file any undertaking before the issuance of an injunction order provided for in RCW 7.42.040, shall not be liable for costs and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, or corporation sought to be enjoined. [1959 c 105 § 5.]

7.42.060 Knowledge of contents chargeable after service. Every person, firm, or corporation who sells, distributes, or acquires possession with intent to sell or distribute any of the matter described in RCW 7.42.020, after the service upon him of a summons and complaint in an action brought by the prosecuting attorney pursuant to this chapter is chargeable with knowledge of the contents thereof. [1959 c 105 § 6.]

7.42.070 Exemptions. Nothing in this chapter shall apply to any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1959 c 105 § 7.]

7.42.900 Severability—1959 c 105. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1959 c 105 § 8.]

Chapter 7.44 NE EXEAT

Sections

7.44.010	Affidavit for writ.
7.44.020	Complaint.
7.44.021	Arrest and bail—Bond.
7.44.030	Recognizance of defendant.
7.44.031	Recognizance of defendant—Discharge by securing performance.
7.44.040	Subrogation of surety—Rights of contractor.
7.44.050	Habeas corpus available to defendant.
7.44.060	District judges have jurisdiction.
7.44.070	Venue.

7.44.010 Affidavit for writ. Actions may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff or his agent shall make and file an affidavit with the clerk of the proper court, that the defendant is about to leave the state without performing or making provisions for the performance of the contract, taking with him property, moneys, credits or effects subject to execution, with intent to defraud plaintiff. [Code 1881 § 636; 1877 p 133 § 639; 1869 p 149 § 576; 1854 p 209 § 418; RRS § 778.]

7.44.020 Complaint. At the time of filing the affidavit the plaintiff shall also file his complaint in the action, and thenceforth the action shall proceed as other actions at law, except as otherwise provided in this chapter. [1891 c 42 (p 81) § 1; Code 1881 § 637; 1877 p 133 § 640; 1869 p 149 § 577; 1854 p 209 § 419; RRS § 779, part: FORMER PARTS OF SECTION: 1891 c 42 § 2 now codified as RCW 7.44.021.]

7.44.021 Arrest and bail—Bond. Upon such affidavit and complaint being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall be issued, served and returned in all respects as such orders in other cases; before such order shall issue the plaintiff shall file in the office of the clerk a bond, with sufficient surety, to be approved by the clerk, conditioned that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by reason of the action, which surety shall justify as provided by law. [1957 c 51 § 10; 1891 c 42 § 2. Formerly RCW 7.44.020, part.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.44.030 Recognizance of defendant. The sheriff shall require the defendant to enter into a bond, with sufficient surety, personally to appear within the time allowed by law for answering the complaint, and to abide the order of the court; and in default thereof the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for the principal, and shall have a right to arrest and deliver him up, as in other cases, and the defendant may give other bail. [1891 c 42 § 3; Code 1881 § 638; 1877 p 133 § 641; 1869 p 149 § 578; 1854 p 209 § 420; RRS § 780, part. FORMER PARTS OF SECTION: Code 1881 § 639; 1877 p 133 § 642; 1869 p 150 § 579; 1854 p 209 § 421 now codified as RCW 7.44.031.]

7.44.031 Recognizance of defendant—Discharge by securing performance. Instead of giving special bail, as above provided, the defendant shall be entitled to his discharge from custody if he will secure the performance of the contract to the satisfaction of the plaintiff. [Code 1881 § 639; 1877 p 133 § 642; 1869 p 150 § 579; 1854 p 209 § 421; RRS § 780, part. Formerly RCW 7.44.030, part.]

7.44.040 Subrogation of surety—Rights of contractor. This proceeding may be had in favor of any surety or other person jointly bound with the defendant. It may also be prosecuted by the person in whose favor the contract exists, against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are nonresidents or probably insolvent, or at the request of any of them when they are residents and solvent. [Code 1881 § 640; 1877 p 133 § 643; 1869 p 150 § 580; 1854 p 210 § 422; RRS § 781.]

7.44.050 Habeas corpus available to defendant. The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail. [Code 1881 § 641; 1877 p 134 § 644; 1869 p 150 § 581; 1854 p 210 § 423; RRS § 782.]

7.44.060 District judges have jurisdiction. The proceedings provided for in this chapter may be had before district judges in all cases within their jurisdiction. [1987 c 202 § 135; 1891 c 42 § 4; Code 1881 § 642; 1877 p 134 § 644; 1869 p 150 § 582; 1854 p 210 § 424; RRS § 783.]

Intent—1987 c 202: See note following RCW 2.04.190.

7.44.070 Venue. The affidavit and bond may be filed, and proceedings had in any county where the defendants may be found. [Code 1881 § 643; 1877 p 134 § 646; 1869 p 150 § 583; 1854 p 210 § 425; RRS § 784.]

Chapter 7.48 NUISANCES

Sections

7.48.010	Actionable nuisances defined.
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- 7.48.030 Issuance and execution of warrant.
- 7.48.040 Stay of issuance of warrant.
- 7.48.050 Moral nuisances—Definitions.
- 7.48.052 Moral nuisances.
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- 7.48.056 Abate moral nuisance—Enjoin owner.
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- 7.48.100 Moral nuisance—Immunity of certain motion picture theatre employees.
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- 7.48.130 Public nuisance defined.
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- 7.48.170 Successive owners liable.
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- 7.48.300 Agricultural activities—Legislative finding and purpose.
- 7.48.305 Agricultural activities—Presumed reasonable and not a nuisance—Exception.
- 7.48.310 Agricultural activities—Definitions.
- 7.48.900 Severability—Initiative Measure No. 335.
- 7.48.905 Severability—1979 c 122.

Nuisances

criminal: Chapter 9.66 RCW.

jurisdiction of superior court: State Constitution Art. 4 § 6 (Amendment 28).

7.48.010 Actionable nuisances defined. The obstruction of any highway or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance and the subject of an action for damages and other and further relief. [Code 1881 § 605; 1877 p 126 § 610; 1869 p 144 § 599; 1854 p 207 § 405; RRS § 943.]

Crimes

malicious mischief: Chapter 9.61 RCW.

public nuisance: RCW 9.66.010.

7.48.020 Who may sue—Judgment for damages—Warrant for abatement—Injunction. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance. If judgment be given for the plaintiff in such action, he may, in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate such nuisance. Such motion shall be allowed, of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined. [1891 c 50 § 1; Code 1881 § 606; 1877 p 126 § 611; 1869 p 144 § 560; 1854 p 207 § 406; RRS § 944.]

7.48.030 Issuance and execution of warrant. If the order be made, the clerk shall thereafter, at any time within six months, when requested by the plaintiff, issue such warrant directed to the sheriff, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings indorsed thereon. The expenses of abating the nuisance may be levied by the sheriff on the property of the defendant, and in this respect the warrant is to be deemed an execution against property. [Code 1881 § 607; 1877 p 126 § 612; 1869 p 145 § 561; 1854 p 207 § 407; RRS § 945.]

7.48.040 Stay of issuance of warrant. At any time before the order is made or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself, upon his giving bond to the plaintiff in a sufficient amount with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order. The sureties shall justify as provided by law. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed. [1957 c 51 § 11; Code 1881 § 608; 1877 p 127 § 613; 1869 p 145 § 562; RRS § 946.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.48.050 Moral nuisances—Definitions. The definitions set forth in this section shall apply throughout this chapter as they relate to moral nuisances.

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, or scientific value.

(3) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(4) "Matter" shall mean a motion picture film or a publication or both.

(5) "Moral nuisance" means a nuisance which is injurious to public morals.

(6) "Motion picture film" shall include any:

(a) Film or plate negative;

(b) Film or plate positive;

(c) Film designed to be projected on a screen for exhibition;

(d) Films, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

(e) Video tape or any other medium used to electronically reproduce images on a screen.

(7) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(8) "Place" includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(9) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(10) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter. [1979 c 1 § 1 (Initiative Measure No. 335, approved November 8, 1977); 1913 c 127 § 1; RRS § 946-1.]

7.48.052 Moral nuisances. The following are declared to be moral nuisances:

(1) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every place in the state where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(4) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(5) Any and every lewd publication possessed at a place which is a moral nuisance under this section;

(6) Every place which, as a regular course of business, is used for the purpose of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution are conducted, permitted, carried on, continued, or exist;

(7) All public houses or places of resort where illegal gambling is carried on or permitted; all houses or places within any city, town, or village, or upon any public road, or highway where drunkenness, illegal gambling, fighting, or breaches of the peace are carried on or permitted; all opium dens, or houses, or places of resort where opium smoking is permitted. [1979 c 1 § 2 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.054 Moral nuisance—Personal property—Effects of notice. The following are also declared to be moral nuisances, as personal property used in conducting and maintaining a moral nuisance:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a moral nuisance;

(2) All valuable consideration received for the sale of any lewd publication which is found to be a moral nuisance;

(3) The furniture, fixtures, and contents of a place which is a moral nuisance.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in RCW 7.48.064, upon the place or its manager, acting manager, or person then in charge, all such persons are deemed to have knowledge of the acts, conditions, or things which make such place a moral nuisance. Where the circumstantial proof warrants a determination that a person had knowledge of the moral nuisance prior to such service of process, the court shall make such finding. [1979 c 1 § 3 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.056 Abate moral nuisance—Enjoin owner. In addition to any other remedy provided by law, any act, occupation, structure, or thing which is a moral nuisance may be abated, and the person doing such act or engaged in such occupation, and the owner and agent of the owner of any such structure or thing, may be enjoined as provided in this chapter. [1979 c 1 § 4 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.058 Maintaining action to abate moral nuisance—Bond. The attorney general, prosecuting attorney, city attorney, city prosecutor, or any citizen of the county may maintain an action of an equitable nature in the name of the state of Washington upon the relation of such attorney general, prosecuting attorney, city attorney, city prosecutor, or citizen, to abate a moral nuisance, to perpetually enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a moral nuisance.

If such action is instituted by a private person, the complainant shall execute a bond to the person against whom complaint is made, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than five hundred dollars, to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, and the court finds there was no reasonable grounds or cause for said action and the case is dismissed for that reason before trial or for want of prosecution. No bond shall be required of the attorney general, prosecuting attorney, city attorney, or city prosecutor, and no action shall be maintained against such public official for his official action when brought in good faith. [1979 c 1 § 5 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.060 Moral nuisance—Jurisdiction—Filing a complaint. The action provided for in RCW 7.48.058 shall be brought in any court of competent jurisdiction in the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a temporary injunction may be made to the court in which the action is filed, or to a judge thereof, who shall grant a hearing within ten days after the filing. [1979 c 1 § 6 (Initiative Measure No. 335, approved November 8, 1977); 1913 c 127 § 2; RRS § 946-2.]

7.48.062 Moral nuisance—Restraining order—Violations. Where such application for a temporary injunction is made, the court or judge thereof may, on application of the complainant showing good cause, issue an ex parte restraining order, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon, except that pending such decision, the stock in trade may not be so restrained, but an inventory and full accounting of all business transactions may be required.

The restraining order may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by both such delivery and posting. The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof while the same remains in force is a contempt of court if such posted order contains therein a notice to that effect. [1979 c 1 § 7 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.064 Moral nuisance—Hearing—Notice—Consolidation with trial. A copy of the complaint, together with a notice of the time and place of the hearing of the application for a temporary injunction, shall be served upon the defendant at least three days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in RCW 7.48.062 in the case of a restraining order. If the hearing is then continued at the instance of any defendant, the temporary writ as prayed shall be granted as a matter of course.

Before or after the commencement of the hearing of an application for a temporary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the temporary injunction. Any evidence received upon an application for a temporary injunction which would be admissible in the trial on the merits becomes a part of the record of the trial and need not be repeated as to such parties at the trial on the merits. [1979 c 1 § 8 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.066 Finding of moral nuisance—Orders. If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court or judge, the court or judge shall issue a temporary injunction without additional bond, restraining the defendant and any other person from continuing the nuisance.

If at the time the temporary injunction is granted, it further appears that the person owning, in control of, or in charge of the nuisance so enjoined had received three days notice of the hearing, then the court shall declare a temporary forfeiture of the use of the real property upon which such public nuisance is located and the personal property located therein, and shall forthwith issue an order closing such place against its use for any purpose until a final decision is rendered on the application for a permanent injunction, unless:

(1) The person owning, in control of, or in charge of such nuisance shows to the satisfaction of the court or judge, by competent and admissible evidence which is subject to cross-examination, that the nuisance complained of has been abated by such person; or

(2) The owner of such property, as a "good faith" lessor, has taken action to void said lease as is authorized by RCW 7.48.085.

Such order shall also continue in effect for such further period as the order authorized in RCW 7.48.062 provides. If no order has been issued pursuant to RCW 7.48.062, then an order restraining the removal or interference with the personal property and contents located therein shall be issued. Such restraining order shall be served and the inventory of such property shall be made and filed as provided for in RCW 7.48.062.

Such order shall also require such persons to show cause within thirty days why such closing order should not be made permanent, as provided for in RCW 7.48-.078. [1979 c 1 § 9 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.068 Abatement of moral nuisance by owner—Effect on injunction. The owner of any real or personal property to be closed or restrained, or which has been closed or restrained, may appear after the filing of the complaint and before the hearing on the application for a permanent injunction.

The court, if satisfied of the good faith of the owner of the real property and of the innocence on the part of any owner of the personal property of any knowledge of its use as a nuisance, and that with reasonable care and diligence such owner could not have known thereof shall, at the time of the hearing on the application for the temporary injunction and upon payment of all costs incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk in the full value of the property to be ascertained by the court, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept, refrain from issuing any order closing such real property or restraining the removal or interference with such personal property, and, if such temporary injunction has already been issued, shall cancel said order and shall deliver such real or personal property, or both, to the respective owners thereof. The release of any real or personal property under this section shall not release it from any judgment, lien, penalty, or liability to which it may be subjected by law. [1979 c 1 § 10 (Initiative Measure No. 335, approved November 8, 1977).]

Voluntary abatement: RCW 7.48.110.

7.48.070 Moral nuisance—Priority of action on calendar. The action provided for in RCW 7.48.058 shall be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions. [1979 c 1 § 11 (Initiative Measure No. 335, approved November 8, 1977); 1913 c 127 § 3; RRS § 946-3.]

7.48.072 Moral nuisance—Effects of admission or finding of guilt. In such action, an admission or finding of guilty of any person under the criminal laws against lewdness, prostitution, or assignation at any such place is admissible for the purpose of proving the existence of such nuisance, and is prima facie evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining such nuisance. [1979 c 1 § 12 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.074 Moral nuisance—Evidence of reputation—Admissibility. At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. [1979 c 1 § 13 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.076 Moral nuisance—Trial—Costs—Dismissal—Judgment. If the action is brought by a

person who is a citizen of the county, and the court finds that there were no reasonable grounds or probable cause for bringing said action, and the case is dismissed before trial for that reason or for want of prosecution, the costs, including attorney's fees, may be taxed to such person.

If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere. The entire expenses of such abatement, including attorney's fees, shall be recoverable by the plaintiff as a part of his costs of the lawsuit.

If the complaint is filed by a person who is a citizen of the county, it shall not be dismissed except upon a sworn statement by the complainant and his attorney, setting forth the reason why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the judge is of the opinion that the action should not be dismissed, he may direct the prosecuting attorney to prosecute said action to judgment at the expense of the county, and if the action is continued for more than one term of court, any person who is a citizen of the county or has an office therein, or the attorney general, the prosecuting attorney, city attorney, or city prosecutor, may be substituted for the complainant and prosecute said action to judgment. [1979 c 1 § 14 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.078 Moral nuisance—Judgment—Penalties—Disposal of personal property. If the existence of a nuisance is admitted or established in an action as provided for in RCW 7.48.058 or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance and not already released under authority of the court as provided for in RCW 7.48.066 and 7.48.068, and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and shall not be sold.

Such judgment shall impose a penalty of three hundred dollars for the maintenance of such nuisance, which penalty shall be imposed against the person or persons found to have maintained the nuisance, and, in case any owner or agent of the building found to have had actual or constructive notice of the maintenance of such nuisance, against such owner or agent, and against the building kept or used for the purposes of maintaining a moral nuisance, which penalty shall be collected by execution as in civil actions, and when collected, shall be paid into the current expense fund of the county in which the judgment is had.

Such order shall also require the renewal for one year of any bond furnished by the owner of the real property, as provided in RCW 7.48.068 or, if not so furnished, shall continue for one year any closing order issued at the time of granting the temporary injunction, or, if no

such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose and keeping it closed for a period of one year unless sooner released.

The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in RCW 7.48.068.

Owners of unsold personal property and contents so seized must appear and claim the same within ten days after such order of abatement is made, and prove innocence to the satisfaction of the court of any knowledge of such use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court. [1979 c 1 § 15 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.080 Moral nuisance—Contempt for violation of injunction. In case of the violation of any injunction granted under the provisions of RCW 7.48.050 through 7.48.100 as now or hereafter amended, the court or judge may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause an attachment to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment. [1979 c 1 § 16 (Initiative Measure No. 335, approved November 8, 1977); 1913 c 127 § 4; RRS § 946-4.]

7.48.085 Moral nuisance—Property owner may repossess. If a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of maintaining a moral nuisance, such use makes void at the option of the owner the lease or other title under which he holds, and without any act of the owner causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises. [1979 c 1 § 17 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.090 Moral nuisance—Contraband—Forfeitures. Lewd matter is contraband, and there are no property rights therein. All personal property declared to be a moral nuisance in RCW 7.48.052 and 7.48.054 and

all moneys and other consideration declared to be a moral nuisance under RCW 7.48.056 are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited, or otherwise used. Such moneys may be traced to and shall be recoverable from persons who, under RCW 7.48.064, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendants in legal proceedings brought pursuant to RCW 7.48.050 through 7.48.100 as now or hereafter amended, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a public nuisance under this section. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such matter is sold or exhibited, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise and as partial restitution for damages done to the public welfare, public health, and public morals.

Where the action is brought pursuant to RCW 7.48-050 through 7.48.100 as now or hereafter amended, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to the following:

- (1) Investigative costs;
- (2) Court costs;
- (3) Reasonable attorney's fees arising out of the preparation for and trial of the cause, appeals therefrom, and other costs allowed on appeal;
- (4) Printing costs of trial and appellate briefs, and all other papers filed in such proceedings. [1979 c 1 § 18 (Initiative Measure No. 335, approved November 8, 1977); 1927 c 94 § 1; 1913 c 127 § 5; RRS § 946-5.]

7.48.100 Moral nuisance—Immunity of certain motion picture theatre employees. The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, if such projectionist, usher, or ticket taker (1) has no financial interest in the place wherein he is so employed, other than his salary, and (2) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under RCW 7.48.050 through 7.48.100 as now or hereafter amended, including pretrial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters. [1979 c 1 § 19 (Initiative Measure No. 335, approved November 8, 1977); 1927 c 94 § 2; 1913 c 127 § 6; RRS § 946-6.]

7.48.110 Houses of lewdness, assignation or prostitution may be abated—Voluntary abatement. If the owner of the building in which a nuisance is found to be maintained, appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the

clerk in the full value of the property to be ascertained by the court, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court or judge may, if satisfied of his good faith, order the premises, closed under the order of abatement, to be delivered to said owner, and said order closing the building canceled. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law. [1927 c 94 § 3; 1913 c 127 § 7; RRS § 946-7.]

7.48.120 Nuisance defined. Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property. [Code 1881 § 1235; 1875 p 79 § 1; RRS § 9914.]

Crimes

*malicious mischief: Chapter 9.61 RCW.
nuisances: Chapter 9.66 RCW.*

7.48.130 Public nuisance defined. A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal. [Code 1881 § 1236; 1875 p 79 § 2; RRS § 9912.]

Crimes, nuisances: Chapter 9.66 RCW.

7.48.140 Public nuisances enumerated. It is a public nuisance:

(1) To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited, or to remain in any place to the prejudice of others;

(2) To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer, street, or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake, or well, to the injury or prejudice of others;

(3) To obstruct or impede, without legal authority, the passage of any river, harbor, or collection of water;

(4) To obstruct or encroach upon public highway, private ways, streets, alleys, commons, landing places, and ways to burying places;

(5) To carry on the business of manufacturing gun powder, nitroglycerine, or other highly explosive substance, or mixing or grinding the materials therefor, in any building within fifty rods of any valuable building erected at the time such business may be commenced;

(6) To establish powder magazines near incorporated cities or towns, at a point different from that appointed

by the corporate authorities of such city or town; or within fifty rods of any occupied dwelling house;

(7) To erect, continue, or use any building, or other place, for the exercise of any trade, employment, or manufacture, which, by occasioning obnoxious exhalations, offensive smells, or otherwise is offensive or dangerous to the health of individuals or of the public;

(8) To suffer or maintain on one's own premises, or upon the premises of another, or to permit to be maintained on one's own premises, any place where wines, spirituous, fermented, malt, or other intoxicating liquors are kept for sale or disposal to the public in contravention of law;

(9) For an owner or occupier of land, knowing of the existence of a well, septic tank, cesspool, or other hole or excavation ten inches or more in width at the top and four feet or more in depth, to fail to cover, fence or fill the same, or provide other proper and adequate safeguards: *Provided*, That this section shall not apply to a hole one hundred square feet or more in area or one that is open, apparent, and obvious.

Every person who has the care, government, management, or control of any building, structure, powder magazine, or any other place mentioned in this section shall, for the purposes of this section, be taken and deemed to be the owner or agent of the owner or owners of such building, structure, powder magazine or other place, and, as such, may be proceeded against for erecting, contriving, causing, continuing, or maintaining such nuisance. [1955 c 237 § 1; 1895 c 14 § 1; Code 1881 § 1246; RRS § 9913.]

Crimes

*malicious mischief: Chapter 9.61 RCW.
nuisance: Chapter 9.66 RCW.*

Devices simulating traffic control signs declared public nuisance: RCW 47.36.180.

7.48.150 Private nuisance defined. Every nuisance not included in the definition of RCW 7.48.130 is private. [Code 1881 § 1237; 1875 p 79 § 3; RRS § 9915.]

7.48.160 Authorized act not a nuisance. Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance. [Code 1881 § 1238; 1875 p 79 § 4; RRS § 9916.]

7.48.170 Successive owners liable. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property caused by a former owner, is liable therefor in the same manner as the one who first created it. [Code 1881 § 1239; 1875 p 79 § 5; RRS § 9917.]

7.48.180 Abatement does not preclude action for damages. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. [Code 1881 § 1240; 1875 p 79 § 6; RRS § 9918.]

7.48.190 Nuisance does not become legal by prescription. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right. [Code 1881 § 1241; 1875 p 80 § 7; RRS § 9919.]

7.48.200 Remedies. The remedies against a public nuisance are: Indictment or information, a civil action, or abatement. The remedy by indictment or information shall be as regulated and prescribed in this chapter. When a civil action for damage is resorted to, the practice shall conform to RCW 7.48.010 through 7.48.040. [1957 c 51 § 12; Code 1881 § 1242; 1875 p 80 § 8; RRS § 9920.]

7.48.210 Civil action, who may maintain. A private person may maintain a civil action for a public nuisance, if it is specially injurious to himself but not otherwise. [Code 1881 § 1243; 1875 p 80 § 9; RRS § 9921.]

7.48.220 Abatement, by whom. A public nuisance may be abated by any public body or officer authorized thereto by law. [Code 1881 § 1244; 1875 p 80 § 10; RRS § 9922.]

7.48.230 Public nuisance—Abatement. Any person may abate a public nuisance which is specially injurious to him by removing, or if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. [Code 1881 § 1245; 1875 p 80 § 11; RRS § 9923.]

7.48.240 Certain places of resort declared nuisances. Houses of ill fame, kept for the purpose, where persons are employed for purposes of prostitution; all public houses or places of resort where gambling is carried on, or permitted; all houses or places within any city, town, or village, or upon any public road, or highway where drunkenness, gambling, fighting or breaches of the peace are carried on, or permitted; all opium dens, or houses, or places of resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and persons carrying on such unlawful business shall be punished as provided in this chapter. [1973 1st ex.s. c 154 § 18; Code 1881 § 1247; 1875 p 81 § 13; RRS § 9924.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

7.48.250 Penalty—Abatement. Whoever is convicted of erecting, causing or contriving a public or common nuisance as described in this chapter, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine, may order such nuisance to be abated, and issue a warrant as hereinafter provided: *Provided*, That orders and warrants of abatement shall not be issued by district judges. [1987 c 202 § 136; 1957 c 45 § 1; Code 1881 § 1248; 1875 p 81 § 14; RRS § 9925.]

Intent—1987 c 202: See note following RCW 2.04.190.

7.48.260 Warrant of abatement. When, upon indictment or information, complaint or action, any person is adjudged guilty of a nuisance, if it be in superior court the court may in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated, or removed at the expense of the defendant, and after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor: *Provided*, That if the conviction was had in a district court, the district judge shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein. [1987 c 202 § 137; 1957 c 45 § 2; Code 1881 § 1249; 1875 p 81 § 15; RRS § 9926, part. FORMER PARTS OF SECTION: Code 1881 § 1250; 1875 p 81 § 16.]

Intent—1987 c 202: See note following RCW 2.04.190.

7.48.270 Stay of warrant. Instead of issuing such warrant, the court may order the same to be stayed upon motion of the defendant, and upon his entering into a bond in such sum and with such surety as the court may direct to the state, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court, and upon his default to perform the condition of his bond, the same shall be forfeited, and the court, upon being satisfied of such default, may order such warrant forthwith to issue, and an order to show cause why judgment should not be entered against the sureties of said bond. [1957 c 45 § 3; Code 1881 § 1251; 1875 p 81 § 17; RRS § 9927.]

7.48.280 Costs of abatement. The expense of abating a nuisance, by virtue of a warrant, can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant or to the owner of the property levied upon, and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. [Code 1881 § 1252; 1875 p 82 § 18; RRS § 9928.]

7.48.300 Agricultural activities—Legislative finding and purpose. The legislature finds that agricultural activities conducted on farmland in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses. It is therefore the purpose of RCW 7.48.300 through 7.48.310 and 7.48.905 to provide that agricultural activities conducted on farmland be protected from nuisance lawsuits. [1979 c 122 § 1.]

7.48.305 Agricultural activities—Presumed reasonable and not a nuisance—Exception. Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.

If that agricultural activity is undertaken in conformity with federal, state, and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety. [1979 c 122 § 2.]

7.48.310 Agricultural activities—Definitions. As used in RCW 7.48.305:

(1) "Agricultural activity" includes, but is not limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.

(2) "Farmland" means land devoted primarily to the production, for commercial purposes, of livestock or agricultural commodities. [1979 c 122 § 3.]

7.48.900 Severability—Initiative Measure No. 335. If any provision of this 1977 amendatory 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. [1979 c 1 § 20 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.905 Severability—1979 c 122. 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. [1979 c 122 § 4.]

Chapter 7.48A

MORAL NUISANCES

Sections

7.48A.010	Definitions.
7.48A.020	Moral nuisances—Declaration of.
7.48A.030	Civil actions—Who may bring.
7.48A.040	Maintenance of moral nuisance—Fine—Maximum.
7.48A.050	Fines—Payment.
7.48A.060	Exceptions to application of chapter.
7.48A.900	Severability—1982 c 184.

7.48A.010 Definitions. The definitions set forth in this section shall apply throughout this chapter.

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual or violent conduct which appears in the lewd matter, or knowledge of the acts of lewdness or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(b) Which explicitly depicts or describes patently offensive representations or descriptions of:

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or

(iii) Violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

(c) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value.

(3) "Lewdness" shall have and include all those meanings which are assigned to it under the common law.

(4) "Matter" shall mean a motion picture film or a publication or both.

(5) "Motion picture film" shall include any:

(a) Film or plate negative;

(b) Film or plate positive;

(c) Film designed to be projected on a screen for exhibition;

(d) Film, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;

(e) Video tape or any other medium used to electronically reproduce images on a screen.

(6) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(7) "Place" includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(8) "Prurient" means that which incites lasciviousness or lust.

(9) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or coin-operated machine.

(10) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter. [1982 c 184 § 1.]

7.48A.020 Moral nuisances—Declaration of. The following are declared to be moral nuisances:

(1) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition;

(2) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;

(3) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;

(4) Every place which, as a regular course of business, is used for the purpose of lewdness or prostitution, and every such place in or upon which acts of lewdness or prostitution are conducted, permitted, carried on, continued, or exist. [1982 c 184 § 2.]

7.48A.030 Civil actions—Who may bring. Any of the following parties may bring a civil action in the superior court of any county where a moral nuisance is alleged to have been maintained:

(1) The prosecuting attorney for the county where the alleged moral nuisance is located;

(2) The city attorney for the city where the alleged moral nuisance is located; or

(3) The attorney general.

The rules of evidence, burden of proof, and all other rules of court shall be the court rules generally applicable to civil cases in this state: *Provided*, That the standard of proof on the issue of obscenity shall be clear, cogent, and convincing evidence. [1982 c 184 § 3.]

7.48A.040 Maintenance of moral nuisance—Fine—Maximum. (1) No person shall with knowledge maintain a moral nuisance.

(2) Upon a determination that a defendant has with knowledge maintained a moral nuisance, the court shall impose a civil fine and judgment of an amount as the court shall determine to be appropriate. In imposing the civil fine, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the lewd matter, lewdness, or prostitution, whichever is applicable. In no event shall the civil fine exceed the greater of twenty-five thousand dollars or these profits. [1985 c 235 § 1; 1982 c 184 § 4.]

Severability—1985 c 235: "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." [1985 c 235 § 4.]

7.48A.050 Fines—Payment. All civil fines assessed under RCW 7.48A.040 shall be paid into the general treasury of the governmental unit commencing the civil action. [1985 c 235 § 2; 1982 c 184 § 5.]

Severability—1985 c 235: See note following RCW 7.48A.040.

7.48A.060 Exceptions to application of chapter. Nothing in this chapter applies to the circulation of any material by any recognized historical society or museum, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1982 c 184 § 6.]

7.48A.900 Severability—1982 c 184. 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. [1982 c 184 § 9.]

Chapter 7.52

PARTITION

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7.52.010 Persons entitled to bring action. When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be maintained by one or more of such persons, for a partition thereof, according to the respective rights of the persons interested therein, and for sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners. [Code 1881 § 552; 1877 p 117 § 557; 1869 p 133 § 505; RRS § 838.]

7.52.020 Requisites of complaint. The interest of all persons in the property shall be set forth in the complaint specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint. [Code 1881 § 553; 1877 p 117 § 558; 1869 p 133 § 506; RRS § 839.]

7.52.030 Lien creditors as parties defendant. The plaintiff may, at his option, make creditors having a lien upon the property or any portion thereof, other than by a judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien. [Code 1881 § 554; 1877 p 117 § 559; 1869 p 133 § 507; RRS § 840.]

7.52.040 Notice. The notice shall be directed by name to all the tenants in common, who are known, and in the same manner to all lien creditors who are made parties to the suit, and generally to all persons unknown, having or claiming an interest or estate in the property. [Code 1881 § 555; 1877 p 117 § 560; 1869 p 133 § 508; RRS § 841.]

7.52.050 Service by publication. If a party, having a share or interest in, or lien upon the property, be unknown, or either of the known parties reside out of the state or cannot be found therein, and such fact be made to appear by affidavit, the notice may be served by publication, as in ordinary cases. When service is made by publication, the notice must contain a brief description of the property which is the subject of the suit. [Code 1881 § 556; 1877 p 117 § 561; 1869 p 134 § 509; RRS § 842.]

Publication of legal notices: Chapter 65.16 RCW.

7.52.060 Answer—Contents. The defendant shall set forth in his answer, the nature, and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security. [Code 1881 § 557; 1877 p 118 § 562; 1869 p 134 § 510; RRS § 843.]

7.52.070 Trial—Proof must be taken. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined in such suit, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the decree for partition or sale is given. [Code 1881 § 558; 1877 p 118 § 563; 1869 p 134 § 511; RRS § 844.]

7.52.080 Order of sale or partition. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees, therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained. [Code 1881 § 559; 1877 p 118 § 564; 1869 p 134 § 512; RRS § 845.]

7.52.090 Partition, how made. In making the partition, the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share. [Code 1881 § 560; 1877 p 118 § 565; 1869 p 134 § 513; RRS § 846.]

7.52.100 Report of referees, confirmation—Effect. The court may confirm or set aside the report in whole or in part, and if necessary, appoint new referees. Upon the report being confirmed a decree shall be entered that such partition be effectual forever, which decree shall be binding and conclusive:

(1) On all parties named therein, and their legal representatives who have at the time any interest in the property divided, or any part thereof as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder or inheritance of such property or any part thereof, after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life.

(2) On all persons interested in the property to whom notice shall have been given by publication.

(3) On all other persons claiming from or through such parties or persons or either of them. [Code 1881 § 561; 1877 p 118 § 566; 1869 p 135 § 514; RRS § 847.]

7.52.110 Decree does not affect tenant. Such decree and partition shall not affect any tenants for years or for life, of the whole of the property which is the subject of partition, nor shall such decree and partition preclude any persons, except such as are specified in RCW 7.52.100, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made. [Code 1881 § 562; 1877 p 119 § 567; 1869 p 135 § 515; RRS § 848.]

7.52.120 Costs. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff and may be allowed as costs. [Code 1881 § 563; 1877 p 119 § 568; 1869 p 135 § 516; RRS § 849.]

7.52.130 Sale of property. If the referees report to the court that the property, of which partition shall have been decreed, or any separate portion thereof is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon by an order direct the referees to sell the property or separate portion thereof. [Code 1881 § 564; 1877 p 119 § 569; 1869 p 135 § 517; RRS § 850.]

7.52.140 Estate for life or years to be set off. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered sold. [Code 1881 § 565; 1877 p 119 § 570; 1869 p 136 § 518; RRS § 851.]

7.52.150 Lien creditors to be brought in. Before making an order of sale, if lien creditors, other than those by judgment or decree, have not been made parties, the court, on motion of either party, shall order the plaintiff to file a supplemental complaint, making such creditors defendants. [Code 1881 § 566; 1877 p 119 § 571; 1869 p 136 § 519; RRS § 852.]

7.52.160 Clerk's certificate of unsatisfied judgment liens. If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the clerk of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property or any portion thereof, and unless he do so the court shall order a referee to ascertain them. [1957 c 51 § 13; Code 1881 § 567; 1877 p 119 § 570; 1869 p 136 § 520; RRS § 853.]

7.52.170 Ascertainment of liens—Priority. If it appear by such certificate or reference, in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property. [Code 1881 § 568; 1877 p 119 § 571; 1869 p 136 § 521; RRS § 854.]

7.52.180 Notice to lienholders. The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgment or decree, to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely on his judgment or decree. [Code 1881 § 569; 1877 p 120 § 572; 1869 p 136 § 522; RRS § 855.]

7.52.190 Proceedings and report of referee. The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts due thereon, or secured thereby, and their priority respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him. [Code 1881 § 570; 1877 p 120 § 573; 1869 p 136 § 523; RRS § 856.]

7.52.200 Exceptions to report—Service of notice on absentee. The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the state, or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his agent or attorney of record, or by publication thereof, for such time and in such manner as the order may prescribe. [Code 1881 § 571; 1877 p 120 § 574; 1869 p 137 § 524; RRS § 857.]

7.52.210 Order of confirmation is conclusive. If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the suit, and upon the lien creditors who have been duly served with the notice to appear before the referee, as provided in RCW 7.52.180. [Code 1881 § 572; 1877 p 120 § 575; 1869 p 137 § 525; RRS § 858.]

7.52.220 Distribution of proceeds of sale. The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows:

- (1) To pay its just proportion of the general costs of the suit.
- (2) To pay the costs of the reference.
- (3) To satisfy the several liens in their order of priority, by payment of the sums due, and to become due, according to the decree.
- (4) The residue among the owners of the property sold, according to their respective shares. [Code 1881 § 573; 1877 p 120 § 576; 1869 p 137 § 526; RRS § 859.]

7.52.230 Other securities to be first exhausted. Whenever any party to the suit, who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may in its discretion, order such sureties to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof. [Code 1881 § 574; 1877 p 121 § 577; 1869 p 137 § 527; RRS § 860.]

7.52.240 Lien proceedings not to delay sale. The proceedings to ascertain the amount of the liens, and to determine their priority as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale, nor affect any other party, whose rights are not involved in such proceedings. [Code 1881 § 575; 1877 p 121 § 578; 1869 p 137 § 528; RRS § 861.]

7.52.250 Distribution at direction of court. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court, or deposited as directed by the court. [Code 1881 § 576; 1877 p 121 § 579; 1869 p 138 § 529; RRS § 862.]

7.52.260 Continuance of suit to determine claims. When the proceeds of sale of any shares or parcel belonging to persons who are parties to the suit and who are known, are paid into court, the suit may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original suit. [Code 1881 § 577; 1877 p 121 § 580; 1869 p 138 § 530; RRS § 863.]

7.52.270 Sales to be by public auction. All sales of real property made by the referees shall be made by public auction, to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice. [Code 1881 § 578; 1877 p 121 § 581; 1869 p 138 § 531; RRS § 864.]

7.52.280 Terms of sale to be directed by court. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties out of the state. [Code 1881 § 579; 1877 p 121 § 583; 1869 p 138 § 532; RRS § 865.]

7.52.290 Referee may take security. The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successors in office; and for the shares of any known owner of full age, in the name of such owner. [Code 1881 § 580; 1877 p 121 § 584; 1869 p 138 § 533; RRS § 866.]

7.52.300 Estate of tenant for life or years may be sold. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the suit, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein;

but if in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered. [Code 1881 § 581; 1877 p 122 § 585; 1869 p 138 § 534; RRS § 867.]

7.52.310 Tenant for life or years may receive sum in gross—Consent. Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged and filed with the clerk. [Code 1881 § 582; 1877 p 122 § 586; 1869 p 139 § 535; RRS § 868.]

7.52.320 Court to determine sum if consent not given. If such consent be not given, as provided in RCW 7.52-.310, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life, or years, and shall order the same to be deposited in court for that purpose. [Code 1881 § 583; 1877 p 122 § 587; 1869 p 139 § 536; RRS § 869.]

7.52.330 Protection of unknown tenant. If the persons entitled to such estate, for life or years, be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared. [Code 1881 § 584; 1877 p 122 § 589; 1869 p 139 § 538; RRS § 870.]

7.52.340 Contingent or vested estates. In all cases of sales in partition, when it appears that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties. [1957 c 51 § 14; Code 1881 § 585; RRS § 871. Cf. Laws 1881 § 586; 1877 p 122 § 590; 1869 p 140 § 539.]

7.52.350 Terms of sale must be made known. In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately or otherwise, if the court so directs. [Code 1881 § 586; 1877 p 122 § 591; 1869 p 140 § 540; RRS § 872.]

7.52.360 Referees or guardians not to be interested in purchase. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase, nor shall the guardian of an infant be an interested party in the purchase of any real property being the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void. [Code 1881 § 587; 1877 p 122 § 592; 1869 p 140 § 541; RRS § 873.]

7.52.370 Referees' report of sale—Contents. After completing the sale, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk. [Code 1881 § 588; 1877 p 122 § 593; 1869 p 140 § 542; RRS § 874.]

7.52.380 Exceptions—Confirmation. The report of sale may be excepted to in writing by any party entitled to a share of the proceeds. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale. [Code 1881 § 589; 1877 p 123 § 594; 1869 p 140 § 543; RRS § 875.]

7.52.390 Purchase by interested party. When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belong to him. [Code 1881 § 590; 1877 p 123 § 595; 1869 p 140 § 544; RRS § 876.]

7.52.400 Investment of proceeds of unknown owner. When there are proceeds of sale belonging to an unknown owner, or to a person without the state who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same shall be invested in securities on interest for the benefit of the persons entitled thereto. [Code 1881 § 591; 1877 p 123 § 596; 1869 p 140 § 545; RRS § 877.]

7.52.410 Investment in name of clerk. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court. [Code 1881 § 592; 1877 p 123 § 597; 1869 p 141 § 546; RRS § 878.]

7.52.420 Securities to parties entitled to share when proportions determined. When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the share and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk. [Code 1881 § 593; 1877 p 123 § 598; 1869 p 141 § 547; RRS § 879.]

7.52.430 Duties of clerk in making investments. The clerk in whose name a security is taken, or by whom an

investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof. [Code 1881 § 594; 1877 p 123 § 599; 1869 p 141 § 548; RRS § 880.]

7.52.440 Unequal partition—Compensation adjudged. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby. [Code 1881 § 595; 1877 p 124 § 600; 1869 p 141 § 549; RRS § 881.]

7.52.450 Infant's share of proceeds to guardian. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale, to his general guardian, or the special guardian appointed for him in the suit, upon giving the security required by law, or directed by order of the court. [Code 1881 § 596; 1877 p 124 § 601; 1869 p 142 § 550; RRS § 882.]

7.52.460 Guardian or limited guardian of incompetent or disabled person may receive proceeds—Bond. The guardian or limited guardian who may be entitled to the custody and management of the estate of an incompetent or disabled person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative. [1977 ex.s. c 80 § 9; Code 1881 § 597; 1877 p 124 § 602; 1869 p 142 § 551; RRS § 883.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

7.52.470 Guardian or limited guardian may consent to partition. The general guardian of an infant, and the guardian or limited guardian entitled to the custody and management of the estate of an incompetent or disabled person adjudged incapable of conducting his own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares or parts to which they may respectively be entitled, and

upon an order of the court. [1977 ex.s. c 80 § 10; Code 1881 § 598; 1877 p 124 § 603; 1869 p 142 § 552; RRS § 884.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

7.52.480 Apportionment of costs. The cost of partition, including fees of referees and other disbursements including reasonable attorney fees to be fixed by the court and in case the land is ordered sold, costs of an abstract of title, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the decree. In that case there shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them. [1923 c 9 § 1; Code 1881 § 599; 1877 p 124 § 604; 1869 p 142 § 553; RRS § 885.]

Chapter 7.56 QUO WARRANTO

Sections

7.56.010	Against whom information may be filed.
7.56.020	Who may file.
7.56.030	Contents of information.
7.56.040	Information for usurping office—Requisites— Damages.
7.56.050	Notice—Pleadings—Proceedings.
7.56.060	Judgment.
7.56.070	Judgment for relator—Ouster of defendant.
7.56.080	Delivery of books and papers—Enforcement of order.
7.56.090	Action for damages—Limitation.
7.56.100	Judgment of ouster or forfeiture.
7.56.110	Judgment against corporation—Costs— Receivership.
7.56.120	Action to recover forfeited property.
7.56.130	Costs.
7.56.140	Information to annul patent, certificate, or deed.
7.56.150	Proceedings to annul.

7.56.010 Against whom information may be filed. An information may be filed against any person or corporation in the following cases:

(1) When any person shall usurp, intrude upon, or unlawfully hold or exercise any public office or franchise within the state, or any office in any corporation created by the authority of the state.

(2) When any public officer shall have done or suffered any act, which, by the provisions of law, shall work a forfeiture of his office.

(3) When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise.

(4) When any association or number of persons shall act within this state as a corporation, without being legally incorporated.

(5) Or where any corporation do, or omit acts which amount to a surrender or a forfeiture of their rights and

privileges as a corporation, or where they exercise powers not conferred by law. [Code 1881 § 702; 1877 p 143 § 706; 1854 p 216 § 468; RRS § 1034.]

7.56.020 Who may file. The information may be filed by the prosecuting attorney in the superior court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise or corporation which is the subject of the information. [Code 1881 § 703; 1877 p 143 § 707; 1854 p 216 § 469; RRS § 1035.]

7.56.030 Contents of information. The information shall consist of a plain statement of the facts which constitute the grounds of the proceedings, addressed to the court. [Code 1881 § 704; 1877 p 143 § 708; 1854 p 216 § 470; RRS § 1036.]

7.56.040 Information for usurping office—Requisites—Damages. Whenever an information shall be filed against a person for usurping an office, by the prosecuting attorney, he shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his right thereto; and when filed by any other person he shall show his interest in the matter, and he may claim the damages he has sustained. [Code 1881 § 705; 1877 p 143 § 709; 1854 p 216 § 471; RRS § 1037.]

7.56.050 Notice—Pleadings—Proceedings. Whenever an information is filed, a notice signed by the relator shall be served and returned, as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceeding be had as in other cases. [Code 1881 § 706; 1877 p 144 § 710; 1854 p 217 § 472; RRS § 1038.]

7.56.060 Judgment. In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, at the time of the judgment. [Code 1881 § 707; 1877 p 144 § 711; 1854 p 217 § 473; RRS § 1039.]

7.56.070 Judgment for relator—Ouster of defendant. If judgment be rendered in favor of the relator, he shall proceed to exercise the functions of the office, after he has been qualified as required by law, and the court shall order the defendant to deliver over all books and papers in his custody or within his power, belonging to the office from which he has been ousted. [Code 1881 § 708; 1877 p 144 § 712; 1854 p 217 § 474; RRS § 1040.]

7.56.080 Delivery of books and papers—Enforcement of order. If the defendant shall refuse or neglect to deliver over the books and papers pursuant to the order, the court or judge thereof shall enforce the order by attachment and imprisonment. [Code 1881 § 709; 1877 p 144 § 713; 1854 p 217 § 475; RRS § 1041.]

7.56.090 Action for damages—Limitation. When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the information, have his action for the damages at any time within one year after the judgment. [Code 1881 § 710; 1877 p 144 § 714; 1854 p 217 § 476; RRS § 1042.]

7.56.100 Judgment of ouster or forfeiture. Whenever any defendant shall be found guilty of any usurpation of or intrusion into, or unlawfully exercising any office or franchise within this state, or any office in any corporation created by the authority of this state, or when any public officer thus charged shall be found guilty of having done or suffered any act which by the provisions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants, and exclude him or them from the office, franchise or corporate rights, and in case of corporations that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff. [Code 1881 § 711; 1877 p 144 § 715; 1854 p 217 § 478; RRS § 1043.]

7.56.110 Judgment against corporation—Costs—Receivership. If judgment be rendered against any corporation or against any persons claiming to be a corporation, the court may cause the costs to be collected by executions against the persons claiming to be a corporation or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose. [Code 1881 § 712; 1877 p 144 § 716; 1854 p 217 § 479; RRS § 1044.]

7.56.120 Action to recover forfeited property. Whenever any property shall be forfeited to the state for its use, the legal title shall be deemed to be in the state from the time of the forfeiture, and an information may be filed by the prosecuting attorney in the superior court for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in civil action for the recovery of the property. [Code 1881 § 713; 1877 p 145 § 717; 1854 p 218 § 480; RRS § 1045.]

Escheats: Chapter 11.08 RCW.

Uniform unclaimed property act: Chapter 63.29 RCW.

7.56.130 Costs. When an information is filed by the prosecuting attorney, he shall not be liable for the costs, but when it is filed upon the relation of a private person such person shall be liable for costs unless the same are adjudged against the defendant. [Code 1881 § 714; 1877 p 145 § 718; 1854 p 218 § 481; RRS § 1046.]

7.56.140 Information to annul patent, certificate, or deed. An information may be prosecuted for the purpose

of annulling or vacating any letters patent, certificate or deed, granted by the proper authorities of this state, when there is reason to believe that the same were obtained by fraud or through mistake or ignorance of a material fact, or when the patentee or those claiming under him have done or omitted an act in violation of the terms on which the letters, deeds or certificates were granted, or have by any other means forfeited the interests acquired under the same. [Code 1881 § 715; 1877 p 145 § 719; 1854 p 218 § 482; RRS § 1047.]

7.56.150 Proceedings to annul. In such cases, the information may be filed by the prosecuting attorney upon his relation, or by any private person upon his relation showing his interest in the subject matter; and the subsequent proceedings, judgment of the court and awarding of costs, shall conform to the above provisions, and such letters patent, deed or certificate shall be annulled or sustained, according to the right of the case. [Code 1881 § 716; 1877 p 145 § 720; 1854 p 218 § 483; RRS § 1048.]

Chapter 7.60 RECEIVERS

Sections

7.60.010	Receiver defined.
7.60.020	Grounds for appointment.
7.60.030	Oath—Bond.
7.60.040	Powers of receiver.
7.60.050	Order when part of claim admitted.

Rules of court: Cf. CR 66, 43(e)(2).

7.60.010 Receiver defined. A receiver is a person appointed by a court or judicial officer to take charge of property during the pending of a civil action or proceeding, or upon a judgment, decree or order therein, and to manage and dispose of it as the court or officer may direct. [1891 c 52 § 1; RRS § 740.]

7.60.020 Grounds for appointment. A receiver may be appointed by the court in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim;

(2) In an action between partners, or other persons jointly interested in any property or fund;

(3) In all actions where it is shown that the property, fund, or rents and profits in controversy are in danger of being lost, removed or materially injured;

(4) In an action by a mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; (or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had);

(5) When a corporation has been dissolved, or is in the process of dissolution or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights, and when the court in its sound discretion deems

that the appointment of a receiver is necessary to secure ample justice to the parties.

(6) And in such other cases as may be provided by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties: *Provided*, That no party or attorney or other person interested in an action shall be appointed receiver therein. [1937 c 47 § 1; Code 1881 § 193; 1877 p 40 § 197; 1869 p 48 § 196; 1854 p 162 § 171; RRS § 741.]

7.60.030 Oath—Bond. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court, execute a bond to such person as the court may direct, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein. [Code 1881 § 194; 1877 p 41 § 198; 1869 p 48 § 198; 1854 p 162 § 173; RRS § 742.]

7.60.040 Powers of receiver. The receiver shall have power, under control of the court, to bring and defend actions, to take and keep possession of the property, to receive rents, collect debts, and generally to do such acts respecting the property, as the court may authorize. [Code 1881 § 198; 1877 p 41 § 202; 1869 p 49 § 202; 1854 p 163 § 177; RRS § 743.]

Rules of court: Cf. SPR 98.10W.

7.60.050 Order when part of claim admitted. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution or attachment. [Code 1881 § 199; 1877 p 41 § 203; 1869 p 49 § 203; 1854 p 163 § 178; RRS § 744.]

Chapter 7.64 REPLEVIN

Sections	
7.64.010	Plaintiff may claim and obtain immediate delivery.
7.64.020	Affidavit for delivery—Order to show cause—Petition—Hearing.
7.64.035	Order awarding possession of property to plaintiff at hearing on order to show cause—Bond by plaintiff—Final judgment.
7.64.045	Plaintiff's duties upon issuance of order for recovery of property, repossession.
7.64.050	Redelivery bond.
7.64.060	Justification of defendant's sureties.
7.64.070	Qualification and justification of sureties.
7.64.080	Building may be broken open.
7.64.090	Sheriff's duty as to property.
7.64.100	Claim by third party—Indemnity bond.
7.64.110	Return of sheriff.
7.64.120	Remedies of plaintiff additional.
7.64.900	Severability—1979 ex.s. c 132.

7.64.010 Plaintiff may claim and obtain immediate delivery. The plaintiff in an action to recover the possession of personal property may claim and obtain the immediate delivery of such property, after a hearing, as provided in this chapter. [1979 ex.s. c 132 § 1; Code

1881 § 142; 1877 p 30 § 142; 1869 p 35 § 140; 1854 p 150 § 100; RRS § 707.]

7.64.020 Affidavit for delivery—Order to show cause—Petition—Hearing. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by someone in his behalf, showing:

(1) That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein including a security interest, the facts in respect to which shall be set forth.

(2) That the property is wrongfully detained by defendant.

(3) That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff; or if so seized, that it is by law exempt from such seizure. And,

(4) The actual value of the property.

At the time of filing the complaint or any time thereafter, the plaintiff may petition the judge or court commissioner to issue an order directing the defendant to appear and show cause why an order putting plaintiff in possession of the personal property should not be issued. The hearing shall be set no earlier than ten and no later than twenty-five days from the date of the order. The order shall contain the date, time, and place of the hearing. A certified copy of the order to show cause shall be served upon the defendant no later than five days before the hearing date, and a copy of the affidavit of the plaintiff shall be attached to the certified copy of the order to show cause. [1979 ex.s. c 132 § 2; Code 1881 § 143; 1877 p 30 § 143; 1869 p 35 § 141; 1854 p 150 § 101; RRS § 708.]

7.64.035 Order awarding possession of property to plaintiff at hearing on order to show cause—Bond by plaintiff—Final judgment. The judge or court commissioner, at the hearing on the order to show cause, may issue an order awarding possession of the property to the plaintiff and directing the sheriff to put plaintiff in possession of the property if the plaintiff establishes his right to obtain possession of the property, pending final disposition, or if defendant, after being served with the order to show cause, fails to appear at the hearing. Before the order may issue prior to final judgment the plaintiff shall execute to defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages, court costs, including reasonable attorneys' fees, and costs of recovery which he may sustain by reason of the order having been issued, should the same be wrongfully sued out.

If more than twenty days have elapsed since service of the summons and complaint, the judge or court commissioner may also enter a final judgment awarding plaintiff possession, damages, court costs, including reasonable attorneys' fees, and costs of recovery unless

defendant raises an issue of fact prior to or at the hearing to show cause which requires a trial on the issue of possession or damages. [1979 ex.s. c 132 § 5.]

7.64.045 Plaintiff's duties upon issuance of order for recovery of property, repossession. Upon issuance of the order for the recovery of property, the plaintiff shall provide the sheriff with all available information as to the location and identity of the defendant and the property claimed. The plaintiff shall deliver a certified copy of the order to show cause and the affidavit of the plaintiff to the sheriff. The sheriff shall leave a copy of the order, affidavit, and bond with the defendant, his agent, his attorney, or the person in possession of the property when the property is taken by the sheriff.

If the property is returned to the plaintiff by the defendant or the plaintiff otherwise obtains possession of the property, the plaintiff shall notify the sheriff of this as soon as possible. [1979 ex.s. c 132 § 6.]

7.64.050 Redelivery bond. At the hearing on the order to show cause or at any time before the delivery of the property to the plaintiff, the defendant may require the return thereof, upon giving to the sheriff or filing with the court a bond executed by one or more sufficient sureties to the effect that they are bound in an amount equal to the value of the bond filed by the plaintiff. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in RCW 7.64.100. [1979 ex.s. c 132 § 3; Code 1881 § 146; 1877 p 31 § 146; 1869 p 36 § 144; 1854 p 151 § 104; RRS § 711.]

7.64.060 Justification of defendant's sureties. The defendant's sureties, upon a notice to the plaintiff or his attorney, of not less than two, nor more than six days, shall justify as provided by law; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed, or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff. [1957 c 51 § 16; Code 1881 § 147; 1877 p 31 § 147; 1869 p 36 § 145; 1854 p 151 § 105; RRS § 712.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.64.070 Qualification and justification of sureties. The qualification of sureties and their justification shall be as prescribed by law. [1957 c 51 § 17; Code 1881 § 148; 1877 p 31 § 148; 1869 p 37 § 146; 1854 p 151 § 106; RRS § 713.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.64.080 Building may be broken open. If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his

possession, and if necessary, he may call to his aid the power of his county. [Code 1881 § 149; 1877 p 31 § 149; 1869 p 37 § 147; 1854 p 151 § 107; RRS § 714.]

7.64.090 Sheriff's duty as to property. When the sheriff shall have taken the property as herein provided, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same. [Code 1881 § 150; 1877 p 32 § 150; 1869 p 37 § 148; 1854 p 151 § 108; RRS § 715.]

7.64.100 Claim by third party—Indemnity bond. If the property taken be claimed by any person other than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand indemnify the sheriff against such claim by a bond, executed by one or more sufficient sureties, and no claim to such property by any person other than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. [1979 ex.s. c 132 § 4; Code 1881 § 151; 1877 p 32 § 151; 1869 p 37 § 149; 1854 p 151 § 109; RRS § 716.]

7.64.110 Return of sheriff. The sheriff shall file the affidavit, with the proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein. [1891 c 34 § 1; Code 1881 § 152; 1877 p 32 § 152; 1869 p 38 § 150; 1854 p 152 § 110; RRS § 717.]

7.64.120 Remedies of plaintiff additional. The remedies of the plaintiff under this chapter are in addition to any other remedy available to the plaintiff, including the right of repossession. [1979 ex.s. c 132 § 7.]

7.64.900 Severability—1979 ex.s. c 132. 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. [1979 ex.s. c 132 § 9.]

Chapter 7.68

VICTIMS OF CRIMES—COMPENSATION, ASSISTANCE

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7.68.020	Definitions.
7.68.030	Duties of department—General provisions.
7.68.035	Penalty assessments in addition to fine or bail forfeiture—Distribution—Establishment of crime victim and witness programs in county—Contribution required from cities and towns.
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Domestic violence, official response: Chapter 10.99 RCW.

Victims of sexual assault, programs and plans in aid of: Chapter 70.125 RCW.

7.68.010 Intent. It is the intent of the legislature of the state of Washington to provide a method of compensating and assisting innocent victims of criminal acts who suffer bodily injury or death as a consequence thereof. To that end, it is the intention of the legislature to make certain of the benefits and services which are now or hereafter available to injured workmen under Title 51 RCW also available to innocent victims of crime as defined and provided for in this chapter. [1977 ex.s. c 302 § 1; 1973 1st ex.s. c 122 § 1.]

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

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

(2) "Criminal act" means an act committed or attempted in this state which is punishable as a felony or gross misdemeanor under the laws of this state, except as follows:

(a) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law does not constitute a "criminal act" unless:

(i) The injury or death was intentionally inflicted;

(ii) The operation thereof was part of the commission of another non-vehicular criminal act as defined in this section; or

(iii) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and a preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61-.520, or a conviction of vehicular assault under RCW 46.61.522, has been obtained: *Provided*, That in cases where a probable criminal defendant has died in perpetration of vehicular assault or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits;

(b) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in subsection (2)(a)(iii) of this section;

(c) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

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

(3) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "workman" as defined in chapter 51.08 RCW as now or hereafter amended.

(4) "Child," "accredited school," "dependent," "beneficiary," "average monthly wage," "director," "injury," "invalid," "permanent partial disability," and "permanent total disability" have the meanings assigned to them in chapter 51.08 RCW as now or hereafter amended.

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

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

(7) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter. [1987 c 281 § 6; 1985 c 443 § 11; 1983 c 239 § 4; 1980 c 156 § 2; 1977 ex.s. c 302 § 2; 1975 1st ex.s. c 176 § 1; 1973 1st ex.s. c 122 § 2.]

Application—1987 c 281 § 6: "The 1987 amendments to RCW 7.68.020 by section 5 [6] of this act apply only to vehicular assault under RCW 46.61.522 or vehicular homicide under RCW 46.61.520 that occurs after the effective date of this section." [1987 c 281 § 7.] The effective date referred to is June 30, 1987.

Effective date—1987 c 281: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987." [1987 c 281 § 9.]

Severability—**Effective date**—1985 c 443: See notes following RCW 7.69.010.

Legislative intent—"Public or private insurance"—1980 c 156: "Sections 2 through 4 of this 1980 act are required to clarify the legislative intent concerning the phrase "public or private insurance" as used in section 13, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.130 which was the subject of *Wagner v. Labor & Indus.*, 92 Wn.2d 463 (1979). It has continuously been the legislative intent to include as "public insurance" both state and federal statutory social welfare and insurance schemes which make available to victims or their beneficiaries recompense as a result of the claimed injury or death, such as but not limited to old age and survivors insurance, medicare, medicaid, benefits under the veterans' benefits act, longshore and harbor workers act, industrial insurance act, law enforcement officers' and fire fighters' retirement system act, Washington public employees' retirement system act, teachers' retirement system act, and firemen's relief and pension act. "Private insurance" continuously has been intended to include sources of recompense available by contract, such as but not limited to policies insuring a victim's life or disability." [1980 c 156 § 1.] For codification of 1980 c 156, see Codification Tables, Volume 0.

7.68.030 Duties of department—General provisions. It shall be the duty of the director to establish and administer a program of benefits to victims of criminal acts within the terms and limitations of this chapter. In so doing, the director shall, in accordance with chapter 34.04 RCW, adopt rules and regulations necessary to the administration of this chapter, and the provisions contained in chapter 51.04 RCW, including but not limited to RCW 51.04.020, 51.04.030, 51.04.040, 51.04.050 and 51.04.100 as now or hereafter amended, shall apply where appropriate in keeping with the intent of this chapter. The director may apply for and, subject to appropriation, expend federal funds under Public Law 98-473 and any other federal program providing financial assistance to state crime victim compensation programs. The federal funds shall be deposited in the public safety and education account in the general fund and may be expended only for purposes authorized by applicable federal law. [1985 c 443 § 12; 1973 1st ex. s. c 122 § 3.]

Severability—**Effective date**—1985 c 443: See notes following RCW 7.69.010.

7.68.035 Penalty assessments in addition to fine or bail forfeiture—Distribution—Establishment of crime victim and witness programs in county—Contribution required from cities and towns. (1) Whenever 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 seventy dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and forty-five dollars for any case or cause of action that includes convictions 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, 46.65.090, 46.61.502, 46.61.504, 46.52.100, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 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), and 46.09.120(2).

(3) Whenever 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 not less than one and seventy-five one-hundredths percent of the money it retains under RCW 10.82.070 and chapter 3.62 RCW and all money it receives under subsection (8) 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 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 public safety and education account established under RCW 43.08.250.

(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) Penalty assessments under this section shall also be imposed in juvenile offense dispositions under Title 13 RCW. Upon motion of a party and a showing of good cause, the court may modify the penalty assessment in the disposition of juvenile offenses under Title 13 RCW.

(8) 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 3.46.120, 3.50.100, and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section. [1987 c 281 § 1; 1985 c 443 § 13; 1984 c 258 § 311; 1983 c 239 § 1; 1982 1st ex.s. c 8 § 1; 1977 ex.s. c 302 § 10.]

Effective date—1987 c 281: See note following RCW 7.68.020.

Severability—**Effective date**—1985 c 443: See notes following RCW 7.69.010.

Court Improvement Act of 1984—**Effective dates**—**Severability**—**Short title**—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Effective dates—1982 1st ex.s. c 8: "Chapter 8, Laws of 1982 1st ex. sess. is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except sections 2, 3, and 6 of chapter 8, Laws of 1982 1st ex. sess. shall take effect on January 1, 1983." [1982 1st ex.s. c 47 § 29; 1982 1st ex.s. c 8 § 9.] Section 2 of chapter 8, Laws of 1982 1st ex. sess. is an amendment to RCW 7.68.070. Sections 3 and 6 of that chapter are codified as RCW 7.68.915 and 2.56.035, respectively. The remainder of the act took effect March 27, 1982.

Intent—**Reports**—1982 1st ex.s. c 8: "The intent of the legislature is that the victim of crime program will be self-funded. Toward that end, the department of labor and industries shall not pay benefits beyond the resources of the account. The department of labor and industries and the administrator for the courts shall cooperatively prepare a report on the collection of penalty assessments and the level of expenditures, and recommend adjustments to the revenue collection mechanism to the legislature before January 1, 1983. It is further the intent of the legislature that the percentage of funds devoted to comprehensive programs for victim assistance, as provided in RCW 7.68.035, be re-examined to ensure that it does not unreasonably conflict

with the higher priority of compensating victims. To that end, the county prosecuting attorneys shall report to the legislature no later than January 1, 1984, either individually or as a group, on their experience and costs associated with such programs, describing the nature and extent of the victim assistance provided." [1982 1st ex.s. c 8 § 10.]

7.68.050 Right of action for damages—Election—Effect of election or recovery—Lien of state.

(1) No right of action at law for damages incurred as a consequence of a criminal act shall be lost as a consequence of being entitled to benefits under the provisions of this chapter. The victim or his beneficiary may elect to seek damages from the person or persons liable for the claimed injury or death, and such victim or beneficiary is entitled to the full compensation and benefits provided by this chapter regardless of any election or recovery made pursuant to this section.

(2) For the purposes of this section, the rights, privileges, responsibilities, duties, limitations, and procedures contained in RCW 51.24.050 through 51.24.100 as now existing or hereafter amended apply.

(3) If the recovery involved is against the state, the lien of the department includes the interest on the benefits paid by the department to or on behalf of such person under this chapter computed at the rate of eight percent per annum from the date of payment.

(4) The 1980 amendments to this section apply only to injuries which occur on or after April 1, 1980. [1980 c 156 § 3; 1977 ex.s. c 302 § 3; 1973 1st ex.s. c 122 § 5.]

Legislative intent—"Public or private insurance"—1980 c 156: See note following RCW 7.68.020.

7.68.060 Applications for benefits. (1) For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 as now or hereafter amended shall apply: *Provided*, That no compensation of any kind shall be available under this chapter if:

(a) An application for benefits is not received by the department within one year after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of dependents or beneficiaries accrued; or

(b) The criminal act is not reported by the victim or someone on his behalf to a local police department or sheriff's office within seventy-two hours of its occurrence or, if it could not reasonably have been reported within that period, within seventy-two hours of the time when a report could reasonably have been made.

(2) This section shall apply only to criminal acts reported after December 31, 1985. [1986 c 98 § 1; 1985 c 443 § 14; 1977 ex.s. c 302 § 4; 1975 1st ex.s. c 176 § 2; 1973 1st ex.s. c 122 § 6.]

Severability—**Effective date**—1985 c 443: See notes following RCW 7.69.010.

7.68.070 Benefits—Right to and amount—Limitations. The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW

as now or hereafter amended except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 as now or hereafter amended are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or his family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, and the rights, duties, responsibilities, limitations, and procedures applicable to a workman as contained in RCW 51.32.010 as now or hereafter amended are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 as now or hereafter amended are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a workman and contained in RCW 51.32.050 as now or hereafter amended shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: *Provided*, That benefits for burial expenses shall not exceed the maximum cost used by the department of social and health services for the funeral and burial of a deceased indigent person under chapter 74.08 RCW in any claim: *Provided further*, That if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived him or where such spouse has legal custody of all of his children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of

three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 as now or hereafter amended for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: *Provided*, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018 as now or hereafter amended:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 as now or hereafter amended for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 as now or hereafter amended for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: *Provided*, That no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 as now or hereafter amended for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: *Provided*, That benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 as now or hereafter amended apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workmen contained in RCW 51.32-.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32-.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 as now or hereafter amended are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than fifteen thousand dollars shall be granted as a result of a single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed twenty thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary

disability under subsection (7) of this section, shall be limited to ten thousand dollars.

(15) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter. [1987 c 281 § 8; 1985 c 443 § 15; 1983 c 239 § 2; 1982 1st ex.s. c 8 § 2; 1981 1st ex.s. c 6 § 26; 1977 ex.s. c 302 § 5; 1975 1st ex.s. c 176 § 3; 1973 1st ex.s. c 122 § 7.]

Effective date—1987 c 281: See note following RCW 7.68.020.

Application—1985 c 443 § 15: "The amendments to RCW 7.68-.070 by this act apply only to criminal acts occurring after December 31, 1985." [1986 c 98 § 3; 1985 c 443 § 17.]

Severability—**Effective date**—1985 c 443: See notes following RCW 7.69.010.

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

Effective date—**Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

7.68.075 Marital status—**Payment for or on account of children.** Notwithstanding the provisions of any of the sections, as now or hereafter amended, of Title 51 RCW which are made applicable to this chapter, the marital status of all victims shall be deemed to be fixed as of the date of the criminal act. All references to the child or children living or conceived of the victim in this chapter shall be deemed to refer to such child or children as of the date of the criminal act unless the context clearly indicates the contrary.

Payments for or on account of any such child or children shall cease when such child is no longer a "child" as defined in RCW 51.08.030, as now or hereafter amended, or on the death of any such child whichever occurs first.

Payments to the victim or surviving spouse for or on account of any such child or children shall be made only when the victim or surviving spouse has legal custody of any such child or children. Where the victim or surviving spouse does not have such legal custody any payments for or on account of any such child or children shall be made to the person having legal custody of such child or children and the amount of payments shall be subtracted from the payments which would have been due the victim or surviving spouse had legal custody not been transferred to another person. [1977 ex.s. c 302 § 6; 1975 1st ex.s. c 176 § 9.]

7.68.080 Medical aid. The provisions of chapter 51-.36 RCW as now or hereafter amended govern the provision of medical aid under this chapter to victims injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, except that:

(1) The provisions contained in RCW 51.36.030, 51-.36.040, and 51.36.080 as now or hereafter amended do not apply to this chapter;

(2) The specific provisions of RCW 51.36.020 as now or hereafter amended relating to supplying emergency transportation do not apply: *Provided*, That when the injury to any victim is so serious as to require his being taken from the place of injury to a place of treatment,

reasonable transportation costs to the nearest place of proper treatment shall be reimbursed from the fund established pursuant to RCW 7.68.090. [1986 c 98 § 2; 1983 c 239 § 3; 1981 1st ex.s. c 6 § 27; 1975 1st ex.s. c 176 § 4; 1973 1st ex.s. c 122 § 8.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

7.68.090 Establishment of funds. The director shall establish such fund or funds, separate from existing funds, necessary to administer this chapter, and payment to these funds shall be from legislative appropriation, reimbursement and subrogation as provided in this chapter, and from any contributions or grants specifically so directed. [1973 1st ex.s. c 122 § 9.]

7.68.100 Physicians' reporting. The requirements relating to physicians' reporting contained in RCW 51.36.060 and 51.48.060 as now or hereafter amended shall apply under this chapter. Any funds collected pursuant to RCW 51.48.060 as now or hereafter amended shall be paid into the fund established pursuant to RCW 7.68.090. [1973 1st ex.s. c 122 § 10.]

7.68.110 Appeals. The provisions contained in chapter 51.52 RCW as now or hereafter amended relating to appeals shall govern appeals under this chapter: *Provided*, That no provision contained in chapter 51.52 RCW concerning employers as parties to any settlement, appeal, or other action shall apply to this chapter: *Provided further*, That appeals taken from a decision of the board of industrial insurance appeals under this chapter shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.04.130 and 34.04.140 as now or hereafter amended, and the department shall have the same right of review from a decision of the board of industrial insurance appeals as does the claimant. [1977 ex.s. c 302 § 7; 1975 1st ex.s. c 176 § 5; 1973 1st ex.s. c 122 § 11.]

7.68.120 Reimbursement. Any person who has committed a criminal act which resulted in injury compensated under this chapter may be required to make reimbursement to the department as hereinafter provided.

(1) Any payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed such criminal act in either a civil or criminal court proceeding in which he is a party: *Provided*, That where there has been a superior or district court order, or an order of the board of prison terms and paroles or the department of social and health services, as hereinafter provided, the debt shall be limited to the amount provided for in said order. A court order shall prevail over any other order.

(2) Upon being placed on work release pursuant to chapter 72.65 RCW, or upon release from custody of a state correctional facility on parole, any convicted person who owes a debt to the department as a consequence of

a criminal act may have the schedule or amount of payments therefor set as a condition of work release or parole by the department of social and health services or board of prison terms and paroles respectively, subject to modification based on change of circumstances. Such action shall be binding on the department.

(3) Any requirement for payment due and owing the department by a convicted person under this chapter may be waived, modified downward or otherwise adjusted by the department in the interest of justice and the rehabilitation of the individual. [1973 1st ex.s. c 122 § 12.]

7.68.125 Erroneous or fraudulent payment—Repayment, when—Penalty. (1) Whenever any payment under this chapter 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 fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter: *Provided*, That the department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim therefor has been waived: *Provided further*, That the department may exercise its discretion to waive, in whole or in part, the amount of any such timely claim.

(2) Whenever any payment under this chapter has been made pursuant to an adjudication by the department, board, or any court and timely appeal therefrom has been made and 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 under this chapter: *Provided*, That the department may exercise its discretion to waive, in whole or in part, the amount thereof.

(3) Whenever any payment under this chapter has been induced by fraud 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 under this chapter and the amount of the penalty shall be placed in the fund or funds established pursuant to RCW 7.68.090 as now or hereafter amended. [1975 1st ex.s. c 176 § 8.]

7.68.130 Public or private insurance. Benefits payable pursuant to this chapter shall be reduced by the amount of any other public or private insurance available. Benefits payable after 1980 to victims injured or killed before 1980 shall be reduced by any other public or private insurance including but not limited to social security. Payment by the department under this chapter shall be secondary to such other insurance benefits, notwithstanding the provision of any contract or coverage to the contrary: *Provided*, That in the case of private life insurance proceeds, the first forty thousand dollars of such proceeds shall not be considered for purposes of

any such reduction in benefits. [1985 c 443 § 16; 1980 c 156 § 4; 1977 ex.s. c 302 § 8; 1973 1st ex.s. c 122 § 13.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Legislative intent—"Public or private insurance"—1980 c 156: See note following RCW 7.68.020.

7.68.140 Confidentiality. Information contained in the claim files and records of victims, under the provisions of this chapter, shall be deemed confidential and shall not be open to public inspection: *Provided*, That, except as limited by state or federal statutes or regulations, such information may be provided to public employees in the performance of their official duties: *Provided further*, That except as otherwise limited by state or federal statutes or regulations a representative of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant: *Provided further*, That physicians treating or examining victims claiming benefits under this chapter or physicians giving medical advice to the department regarding any claim may, at the discretion of the department and as not otherwise limited by state or federal statutes or regulations, inspect the claim files and records of such victims, and other persons may, when rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter, inspect the claim files and records of such victims at the discretion of the department and as not otherwise limited by state or federal statutes or regulations. [1975 1st ex.s. c 176 § 6; 1973 1st ex.s. c 122 § 14.]

7.68.145 Release of information in performance of official duties. Notwithstanding any other provision of law, all law enforcement, criminal justice, or other governmental agencies, or hospital; any physician or other practitioner of the healing arts; or any other organization or person having possession or control of any investigative or other information pertaining to any alleged criminal act or victim concerning which a claim for benefits has been filed under this chapter, shall, upon request, make available to and allow the reproduction of any such information by the section of the department administering this chapter or other public employees in their performance of their official duties under this chapter.

No person or organization, public or private, shall incur any legal liability by reason of releasing any such information to the director of labor and industries or the section of the department which administers this chapter or other public employees in the performance of their official duties under this chapter. [1975 1st ex.s. c 176 § 7.]

7.68.150 Benefits, payments and costs to be funded and accounted for separately. All benefits and payments made, and all administrative costs accrued, pursuant to this chapter shall be funded and accounted for separate

from the other operations and responsibilities of the department. [1973 1st ex.s. c 122 § 15.]

7.68.160 Claims of persons injured prior to effective date. Any person who has been injured as a result of a "criminal act" as herein defined on or after January 1, 1972 up to the effective date of this 1973 act, who would otherwise be eligible for benefits under this chapter, may for a period of ninety days from the effective date of this 1973 act, file a claim for benefits with the department on a form provided by the department. The department shall investigate and review such claims, and, within two hundred ten days of the effective date of this 1973 act, shall report to the governor its findings and recommendations as to such claims, along with a statement as to what special legislative relief, if any, the department recommends should be provided. [1986 c 158 § 2; 1973 1st ex.s. c 122 § 16.]

Effective date—1973 1st ex.s. c 122: See RCW 7.68.900 and note following.

7.68.165 Application of chapter to claims filed under RCW 7.68.160. The rights, privileges, responsibilities, duties, limitations and procedures contained in this chapter shall apply to those claims filed pursuant to RCW 7.68.160. In respect to such claims, the department shall proceed in the same manner and with the same authority as provided in this chapter with respect to those claims filed pursuant to RCW 7.68.060 as now or hereafter amended. [1975 1st ex.s. c 176 § 10.]

7.68.170 Examination costs of sexual assault victims paid by state. No costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sexual assault, when such examination is performed for the purposes of gathering evidence for possible prosecution, shall be billed or charged directly or indirectly to the victim of such assault. Such costs shall be paid by the state pursuant to this chapter. [1979 ex.s. c 219 § 11.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.200 Payment for reenactments of crimes—Contracts—Deposits—Damages. After hearing, as provided in RCW 7.68.210, every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinion or emotions regarding such crime, shall submit a copy of such contract to the department and pay over to the department any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives. The department shall deposit such moneys in an escrow account for the benefit of and payable to any victim or

the legal representative of any victim of crimes committed by: (i) such convicted person; or (ii) such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives. [1979 ex.s. c 219 § 13.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.210 Payment may be directed based on contract. The prosecutor or the department may, at any time after the person's arraignment petition any superior court for an order, following notice and hearing, directing that any contract described in RCW 7.68.200 shall be paid in accordance with RCW 7.68.200 through 7.68.280. [1979 ex.s. c 219 § 12.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.220 Notice published of moneys in escrow. The department, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section. For crimes committed in a city located within a county having a population of one million or more, the notice provided for in this section shall be in newspapers having general circulation in such city. The department may, in its discretion, provide for such additional notice as it deems necessary. [1979 ex.s. c 219 § 14.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.230 Payment to accused if charges dismissed, acquitted. Upon dismissal of charges or acquittal of any accused person the department shall immediately pay over to such accused person the moneys in the escrow account established on behalf of such accused person. [1979 ex.s. c 219 § 15.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.240 Payment if no actions pending. Upon a showing by any convicted person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to *this act, the department shall immediately pay over any moneys in the escrow account to such person or his legal representatives. [1979 ex.s. c 219 § 16.]

***Reviser's note:** "this act" literally refers to 1979 ex.s. c 219. As used in this section, the term apparently refers to only sections 12 through 20 of that act, which are codified as RCW 7.68.200 through 7.68.280.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010

7.68.250 Persons not guilty for mental reasons deemed convicted. For purposes of *this act, a person found not guilty as a result of the defense of mental disease or defect shall be deemed to be a convicted person. [1979 ex.s. c 219 § 17.]

***Reviser's note:** "this act," see note following RCW 7.68.240.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.260 Time for filing action begins when escrow account established. Notwithstanding any inconsistent provision of the civil practice and rules with respect to the timely bringing of an action, the five year period provided for in RCW 7.68.200 shall not begin to run until an escrow account has been established. [1979 ex.s. c 219 § 18.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.270 Escrow moneys may be used for legal representation. Notwithstanding the foregoing provisions of *this act the department shall make payments from an escrow account to any person accused or convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process. [1979 ex.s. c 219 § 19.]

***Reviser's note:** "this act," see note following RCW 7.68.240.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.280 Actions to avoid law null and void. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of *this act shall be null and void as against the public policy of this state. [1979 ex.s. c 219 § 20.]

***Reviser's note:** "this act," see note following RCW 7.68.240.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

7.68.290 Restitution—Disposition when victim not found or dead. If a defendant has paid restitution pursuant to court order under RCW 9.92.060, 9.95.210, or 9A.20.030 and the victim entitled to restitution cannot be found or has died, the clerk of the court shall deposit with the county treasurer the amount of restitution unable to be paid to the victim. The county treasurer shall monthly transmit the money to the state treasurer for deposit as provided in RCW 43.08.250. Moneys deposited under this section shall be used to compensate victims of crimes through the crime victims compensation fund. [1987 c 281 § 2.]

Effective date—1987 c 281: See note following RCW 7.68.020.

7.68.900 Effective date—1973 1st ex.s. c 122. This chapter shall take effect on July 1, 1974. [1973 1st ex.s. c 122 § 17.]

Funding required: "This bill shall not take effect until the funds necessary for its implementation have been specifically appropriated by the legislature and such appropriation itself has become law. It is the intention of the legislature that if the governor shall veto this section or any item thereof, none of the provisions of this bill shall take effect." [1973 1st ex.s. c 122 § 21.]

7.68.905 Severability—Construction—1977 ex.s. c 302. (1) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.

(2) Subsection (1) of this section shall be effective retroactively to July 1, 1974. [1977 ex.s. c 302 § 12.]

7.68.910 Section captions. Section captions as used in this act do not constitute any part of the law. [1973 1st ex.s. c 122 § 20.]

7.68.915 Savings—Statute of limitations—1982 1st ex.s. c 8. Nothing in *this act affects or impairs any right to benefits existing prior to **the effective date of this act. For injuries occurring on and after July 1, 1981, and before **the effective date of this act, the statute of limitations for filing claims under this chapter shall begin to run on **the effective date of this act. [1982 1st ex.s. c 8 § 3.]

Reviser's note: *(1) "This act" [1982 1st ex.s. c 8] consists of RCW 2.56.035 and 7.68.915, amendments to RCW 7.68.035, 7.68.070, 9.92.060, 9.95.210, and several uncodified sections.

** (2) For "the effective date of this act," see note following RCW 7.68.035.

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

Chapter 7.69

CRIME VICTIMS, SURVIVORS, AND WITNESSES

Sections

7.69.010	Intent.
7.69.020	Definitions.
7.69.030	Rights of victims, survivors, and witnesses.
7.69.040	Representation of incapacitated or incompetent victim.
7.69.050	Construction of chapter—Other remedies or defenses.

7.69.010 Intent. In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a significant role in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of

crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants. [1985 c 443 § 1; 1981 c 145 § 1.]

Severability—1985 c 443: "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." [1985 c 443 § 27.]

Effective date—1985 c 443: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1985." [1985 c 443 § 28.]

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

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Survivor" or "survivors" of a victim of crime means a spouse, child, parent, legal guardian, sibling, or grandparent. If there is more than one survivor of a victim of crime, one survivor shall be designated by the prosecutor to represent all survivors for purposes of providing the notice to survivors required by this chapter.

(3) "Victim" means a person against whom a crime has been committed or the representative of a person against whom a crime has been committed.

(4) "Victim impact statement" means a statement submitted to the court by the victim or a survivor, individually or with the assistance of the prosecuting attorney if assistance is requested by the victim or survivor, which may include but is not limited to information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.

(5) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced. [1985 c 443 § 2; 1981 c 145 § 2.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

7.69.030 Rights of victims, survivors, and witnesses. There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights:

(1) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

(2) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(3) To receive protection from harm and threats of harm arising out of cooperation with law enforcement

and prosecution efforts, and to be provided with information as to the level of protection available;

(4) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(5) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(6) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(7) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(8) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;

(9) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

(10) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;

(11) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

(12) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions; and

(13) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment. [1985 c 443 § 3; 1981 c 145 § 3.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Child victims and witnesses, additional rights: Chapter 7.69A RCW.

7.69.040 Representation of incapacitated or incompetent victim. For purposes of this chapter, a victim who is incapacitated or otherwise incompetent shall be represented by a parent or present legal guardian, or if none exists, by a representative designated by the prosecuting attorney without court appointment or legal guardianship proceedings. Any victim may designate another person as the victim's representative for purposes of the rights enumerated in RCW 7.69.030. [1985 c 443 § 4.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

7.69.050 Construction of chapter—Other remedies or defenses. Nothing contained in this chapter may be construed to provide grounds for error in favor of a criminal defendant in a criminal proceeding, nor may anything in this chapter be construed to grant a new cause of action or remedy against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys. The failure of a person to make a reasonable effort to ensure that victims, survivors, and witnesses under this chapter have the rights enumerated in RCW 7.69.030 shall not result in civil liability against that person. This chapter does not limit other civil remedies or defenses of the offender or the victim or survivors of the victim. [1985 c 443 § 5.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Chapter 7.69A

CHILD VICTIMS AND WITNESSES

Sections

7.69A.010	Legislative intent.
7.69A.020	Definitions.
7.69A.030	Rights of child victims and witnesses.
7.69A.040	Liability for failure to notify or assure child's rights.

7.69A.010 Legislative intent. The legislature recognizes that it is important that child victims and child witnesses of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to state and local enforcement efforts and the general effectiveness of the criminal justice system of this state. Therefore, it is the intent of the legislature by means of this chapter, to insure that all child victims and witnesses of crime are treated with the sensitivity, courtesy, and special care that must be afforded to each child victim of crime and that their rights be protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded the adult victim, witness, or criminal defendant. [1985 c 394 § 1.]

Reviser's note: "This chapter" has been substituted for "this act" in this section.

7.69A.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Child" means any living child under the age of eighteen years.

(3) "Victim" means a living person against whom a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.

(5) "Family member" means child, parent, or legal guardian.

(6) "Advocate" means any person, including a family member not accused of a crime, who provides support to a child victim or child witness during any legal proceeding. [1985 c 394 § 2.]

7.69A.030 Rights of child victims and witnesses. In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. The enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights:

(1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.

(2) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.

(3) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.

(4) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

(5) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.

(6) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.

(7) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

(8) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.

(9) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of the child victim. [1985 c 394 § 3.]

7.69A.040 Liability for failure to notify or assure child's rights. The failure to provide notice to a child victim or witness under this chapter of the rights enumerated in RCW 7.69A.030 shall not result in civil liability so long as the failure to notify was in good faith and without gross negligence. The failure to make a reasonable effort to assure that child victims and witnesses are afforded the rights enumerated in RCW 7.69A.030 shall not result in civil liability so long as the failure to make a reasonable effort was in good faith and without gross negligence. [1985 c 394 § 4.]

Chapter 7.70

ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

Sections

7.70.010	Declaration of modification of actions for damages based upon injuries resulting from health care.
7.70.020	Definitions.
7.70.030	Propositions required to be established—Burden of proof.
7.70.040	Necessary elements of proof that injury resulted from failure to follow accepted standard of care.
7.70.050	Failure to secure informed consent—Necessary elements of proof—Emergency situations.
7.70.060	Consent form—Contents—Prima facie evidence—Failure to use.
7.70.065	Informed consent—Persons authorized to provide for patients who are not competent—Priority.
7.70.070	Attorneys' fees.
7.70.080	Evidence of compensation from other source.
7.70.090	Hospital governing bodies—Liability—Limitations.

Complaint in personal injury actions not to include statement of damages: RCW 4.28.360.

Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter 5.64 RCW.

Immunity of members of professional review committees, societies, examining, licensing or disciplinary boards from civil suit: RCW 4.24.240.

Statute of limitations in actions for injuries resulting from health care: RCW 4.16.350.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

7.70.010 Declaration of modification of actions for damages based upon injuries resulting from health care. The state of Washington, exercising its police and sovereign power, hereby modifies as set forth in this chapter and in RCW 4.16.350, as now or hereafter amended,

certain substantive and procedural aspects of all civil actions and causes of action, whether based on tort, contract, or otherwise, for damages for injury occurring as a result of health care which is provided after June 25, 1976. [1975-'76 2nd ex.s. c 56 § 6.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.020 Definitions. As used in this chapter "health care provider" means either:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a certified acupuncturist, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, midwife, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in part (1) above, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in part (1) above, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including in the event such officer, director, employee, or agent is deceased, his estate or personal representative. [1985 c 326 § 27; 1981 c 53 § 1; 1975-'76 2nd ex.s. c 56 § 7.]

Effective date—1981 c 53: See note following RCW 18.50.005.

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.030 Propositions required to be established—

Burden of proof. No award shall be made in any action or arbitration for damages for injury occurring as the result of health care which is provided after June 25, 1976, unless the plaintiff establishes one or more of the following propositions:

(1) That injury resulted from the failure of a health care provider to follow the accepted standard of care;

(2) That a health care provider promised the patient or his representative that the injury suffered would not occur;

(3) That injury resulted from health care to which the patient or his representative did not consent.

Unless otherwise provided in this chapter, the plaintiff shall have the burden of proving each fact essential to an award by a preponderance of the evidence. [1975-'76 2nd ex.s. c 56 § 8.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.040 Necessary elements of proof that injury resulted from failure to follow accepted standard of care.

The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

(1) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he belongs, in the state of Washington, acting in the same or similar circumstances;

(2) Such failure was a proximate cause of the injury complained of. [1983 c 149 § 2; 1975-'76 2nd ex.s. c 56 § 9.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.050 Failure to secure informed consent—**Necessary elements of proof**—**Emergency situations.**

(1) The following shall be necessary elements of proof that injury resulted from health care in a civil negligence case or arbitration involving the issue of the alleged breach of the duty to secure an informed consent by a patient or his representatives against a health care provider:

(a) That the health care provider failed to inform the patient of a material fact or facts relating to the treatment;

(b) That the patient consented to the treatment without being aware of or fully informed of such material fact or facts;

(c) That a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts;

(d) That the treatment in question proximately caused injury to the patient.

(2) Under the provisions of this section a fact is defined as or considered to be a material fact, if a reasonably prudent person in the position of the patient or his representative would attach significance to it deciding whether or not to submit to the proposed treatment.

(3) Material facts under the provisions of this section which must be established by expert testimony shall be either:

(a) The nature and character of the treatment proposed and administered;

(b) The anticipated results of the treatment proposed and administered;

(c) The recognized possible alternative forms of treatment; or

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment administered and in the recognized possible alternative forms of treatment, including nontreatment.

(4) If a recognized health care emergency exists and the patient is not legally competent to give an informed consent and/or a person legally authorized to consent on behalf of the patient is not readily available, his consent to required treatment will be implied. [1975-'76 2nd ex.s. c 56 § 10.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.060 Consent form—Contents—Prima facie evidence—Failure to use. If a patient while legally competent, or his representative if he is not competent, signs a consent form which sets forth the following, the signed consent form shall constitute prima facie evidence that the patient gave his informed consent to the treatment administered and the patient has the burden of rebutting this by a preponderance of the evidence:

(1) A description, in language the patient could reasonably be expected to understand, of:

(a) The nature and character of the proposed treatment;

(b) The anticipated results of the proposed treatment;

(c) The recognized possible alternative forms of treatment; and

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment, including nontreatment;

(2) Or as an alternative, a statement that the patient elects not to be informed of the elements set forth in subsection (1) of this section.

Failure to use a form shall not be admissible as evidence of failure to obtain informed consent. [1975-'76 2nd ex.s. c 56 § 11.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

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

(1) Informed consent for health care for a patient who is not competent, as defined in RCW 11.88.010(1)(b), to consent may be obtained from a person authorized to consent on behalf of such patient. Persons authorized to provide informed consent to health care on behalf of a patient who is not competent to consent shall be a member of one of the following classes of persons in the following order of priority:

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

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

(c) The patient's spouse;

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

(e) Parents of the patient; and

(f) Adult brothers and sisters of the patient.

(2) If the physician seeking informed consent for proposed health care of the patient who is not competent to consent makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care:

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

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

(3) Before any person authorized to provide informed consent on behalf of a patient not competent to consent exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests. [1987 c 162 § 1.]

7.70.070 Attorneys' fees. The court shall, in any action under this chapter, determine the reasonableness of each party's attorneys fees. The court shall take into consideration the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) Whether the fee is fixed or contingent. [1975-'76 2nd ex.s. c 56 § 12.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

Attorneys' fees: Chapter 4.84 RCW.

7.70.080 Evidence of compensation from other source. Any party may present evidence to the trier of fact that the patient has already been compensated for the injury complained of from any source except the assets of the patient, his representative, or his immediate family, or insurance purchased with such assets. In the event such evidence is admitted, the plaintiff may present evidence of an obligation to repay such compensation. Insurance bargained for or provided on behalf of an employee shall be considered insurance purchased with the assets of the employee. Compensation as used in this section shall mean payment of money or other property to or on behalf of the patient, rendering of services to the patient free of charge to the patient, or indemnification of expenses incurred by or on behalf of the patient. Notwithstanding this section, evidence of compensation by a defendant health care provider may be offered only by that provider. [1975-'76 2nd ex.s. c 56 § 13.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.

7.70.090 Hospital governing bodies—Liability—Limitations. Members of the board of directors or other governing body of a public or private hospital are not individually liable for personal injuries or death resulting

from health care administered by a health care provider granted privileges to provide health care at the hospital unless the decision to grant the privilege to provide health care at the hospital constitutes gross negligence. [1987 c 212 § 1201; 1986 c 305 § 905.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

Chapter 7.71 HEALTH CARE PEER REVIEW

Sections	
7.71.010	Legislative finding.
7.71.020	Federal law applicable in Washington state.
7.71.030	Actions by health care peer review body—Exclusive remedy.
7.71.040	Chapter does not limit or repeal other immunities conferred by law.

7.71.010 Legislative finding. The legislature finds the assurance of quality and cost-effectiveness in the delivery of health care can be assisted through the review of health care by health care providers. It also recognizes that some peer review decisions may be based on factors other than competence or professional conduct. Although it finds that peer review decisions based on matters unrelated to quality and utilization review need redress, it concludes that it is necessary to balance carefully the rights of the consuming public who benefit by peer review with the rights of those who are occasionally hurt by peer review decisions based on matters other than competence or professional conduct.

The legislature intends to foreclose federal antitrust actions to the extent *Parker v. Brown*, 317 U.S. 341 (1943), allows and to permit only those actions in RCW 7.71.020 and 7.71.030. [1987 c 269 § 1.]

7.71.020 Federal law applicable in Washington state. Pursuant to P.L. 99-660 Sec. 411(c)(2), Title IV of that act shall apply in Washington state as of July 26, 1987. [1987 c 269 § 2.]

7.71.030 Actions by health care peer review body—Exclusive remedy. (1) This section shall provide the exclusive remedy for any action taken by a professional peer review body of health care providers as defined in RCW 7.70.020, that is found to be based on matters not related to the competence or professional conduct of a health care provider.

(2) Actions shall be limited to appropriate injunctive relief, and damages shall be allowed only for lost earnings directly attributable to the action taken by the professional review body, incurred between the date of such action and the date the action is functionally reversed by the professional peer review body.

(3) Reasonable attorneys' fees and costs as approved by the court shall be awarded to the prevailing party, if any, as determined by the court.

(4) The statute of limitations for actions under this section shall be one year from the date of the action of the professional review body. [1987 c 269 § 3.]

7.71.040 Chapter does not limit or repeal other immunities conferred by law. Nothing in this chapter limits or repeals any other immunities conferred upon participants in the peer review process contained in any other state or federal law. [1987 c 269 § 4.]

Chapter 7.72 PRODUCT LIABILITY ACTIONS

Sections	
7.72.010	Definitions.
7.72.020	Scope.
7.72.030	Liability of manufacturers.
7.72.040	Liability of product sellers other than manufacturers.
7.72.050	Relevance of industry custom, technological feasibility, and nongovernmental, legislative or administrative regulatory standards.
7.72.060	Length of time product sellers are subject to liability.

Reviser's note: Section and subsection captions used in this chapter were enacted as a part of chapter 27, Laws of 1981.

Contributory fault: Chapter 4.22 RCW.

7.72.010 Definitions. For the purposes of this chapter, unless the context clearly indicates to the contrary:

(1) **Product seller.** "Product seller" means any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of the relevant product. The term also includes a party who is in the business of leasing or bailing such products. The term "product seller" does not include:

(a) A seller of real property, unless that person is engaged in the mass production and sale of standardized dwellings or is otherwise a product seller;

(b) A provider of professional services who utilizes or sells products within the legally authorized scope of the professional practice of the provider;

(c) A commercial seller of used products who resells a product after use by a consumer or other product user: *Provided*, That when it is resold, the used product is in essentially the same condition as when it was acquired for resale; and

(d) A finance lessor who is not otherwise a product seller. A "finance lessor" is one who acts in a financial capacity, who is not a manufacturer, wholesaler, distributor, or retailer, and who leases a product without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(2) **Manufacturer.** "Manufacturer" includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. The term also includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer.

A product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a "manufacturer" but only to the extent that it designs, produces,

makes, fabricates, constructs, or remanufactures the product for its sale. A product seller who performs minor assembly of a product in accordance with the instructions of the manufacturer shall not be deemed a manufacturer. A product seller that did not participate in the design of a product and that constructed the product in accordance with the design specifications of the claimant or another product seller shall not be deemed a manufacturer for the purposes of RCW 7.72.030(1)(a).

(3) **Product.** "Product" means any object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce. Human tissue and organs, including human blood and its components, are excluded from this term.

The "relevant product" under this chapter is that product or its component part or parts, which gave rise to the product liability claim.

(4) **Product liability claim.** "Product liability claim" includes any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product. It includes, but is not limited to, any claim or action previously based on: Strict liability in tort; negligence; breach of express or implied warranty; breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation, concealment, or nondisclosure, whether negligent or innocent; or other claim or action previously based on any other substantive legal theory except fraud, intentionally caused harm or a claim or action under the consumer protection act, chapter 19.86 RCW.

(5) **Claimant.** "Claimant" means a person or entity asserting a product liability claim, including a wrongful death action, and, if the claim is asserted through or on behalf of an estate, the term includes claimant's decedent. "Claimant" includes any person or entity that suffers harm. A claim may be asserted under this chapter even though the claimant did not buy the product from, or enter into any contractual relationship with, the product seller.

(6) **Harm.** "Harm" includes any damages recognized by the courts of this state: *Provided*, That the term "harm" does not include direct or consequential economic loss under Title 62A RCW. [1981 c 27 § 2.]

Preamble—1981 c 27: "Tort reform in this state has for the most part been accomplished in the courts on a case-by-case basis. While this process has resulted in significant progress and the harshness of many common law doctrines has to some extent been ameliorated by decisional law, the legislature has from time to time felt it necessary to intervene to bring about needed reforms such as those contained in the 1973 comparative negligence act.

The purpose of this amendatory act is to enact further reforms in the tort law to create a fairer and more equitable distribution of liability among parties at fault.

Of particular concern is the area of tort law known as product liability law. Sharply rising premiums for product liability insurance have increased the cost of consumer and industrial goods. These increases in premiums have resulted in disincentives to industrial innovation and the development of new products. High product liability premiums

may encourage product sellers and manufacturers to go without liability insurance or pass the high cost of insurance on to the consuming public in general.

It is the intent of the legislature to treat the consuming public, the product seller, the product manufacturer, and the product liability insurer in a balanced fashion in order to deal with these problems.

It is the intent of the legislature that the right of the consumer to recover for injuries sustained as a result of an unsafe product not be unduly impaired. It is further the intent of the legislature that retail businesses located primarily in the state of Washington be protected from the substantially increasing product liability insurance costs and unwarranted exposure to product liability litigation." [1981 c 27 § 1.] For codification of 1981 c 27, see Codification Tables, Volume 0.

7.72.020 Scope. (1) The previous existing applicable law of this state on product liability is modified only to the extent set forth in this chapter.

(2) Nothing in this chapter shall prevent the recovery of direct or consequential economic loss under Title 62A RCW. [1981 c 27 § 3.]

7.72.030 Liability of manufacturers. (1) A product manufacturer is subject to liability to a claimant if the claimant's harm was proximately caused by the negligence of the manufacturer in that the product was not reasonably safe as designed or not reasonably safe because adequate warnings or instructions were not provided.

(a) A product is not reasonably safe as designed, if, at the time of manufacture, the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms, outweighed the burden on the manufacturer to design a product that would have prevented those harms and the adverse effect that an alternative design that was practical and feasible would have on the usefulness of the product.

(b) A product is not reasonably safe because adequate warnings or instructions were not provided with the product, if, at the time of manufacture, the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms, rendered the warnings or instructions of the manufacturer inadequate and the manufacturer could have provided the warnings or instructions which the claimant alleges would have been adequate.

(c) A product is not reasonably safe because adequate warnings or instructions were not provided after the product was manufactured where a manufacturer learned or where a reasonably prudent manufacturer should have learned about a danger connected with the product after it was manufactured. In such a case, the manufacturer is under a duty to act with regard to issuing warnings or instructions concerning the danger in the manner that a reasonably prudent manufacturer would act in the same or similar circumstances. This duty is satisfied if the manufacturer exercises reasonable care to inform product users.

(2) A product manufacturer is subject to strict liability to a claimant if the claimant's harm was proximately caused by the fact that the product was not reasonably safe in construction or not reasonably safe because it did not conform to the manufacturer's express warranty or to the implied warranties under Title 62A RCW.

(a) A product is not reasonably safe in construction if, when the product left the control of the manufacturer, the product deviated in some material way from the design specifications or performance standards of the manufacturer, or deviated in some material way from otherwise identical units of the same product line.

(b) A product does not conform to the express warranty of the manufacturer if it is made part of the basis of the bargain and relates to a material fact or facts concerning the product and the express warranty proved to be untrue.

(c) Whether or not a product conforms to an implied warranty created under Title 62A RCW shall be determined under that title.

(3) In determining whether a product was not reasonably safe under this section, the trier of fact shall consider whether the product was unsafe to an extent beyond that which would be contemplated by the ordinary consumer. [1981 c 27 § 4.]

7.72.040 Liability of product sellers other than manufacturers. (1) Except as provided in subsection (2) of this section, a product seller other than a manufacturer is liable to the claimant only if the claimant's harm was proximately caused by:

(a) The negligence of such product seller; or

(b) Breach of an express warranty made by such product seller; or

(c) The intentional misrepresentation of facts about the product by such product seller or the intentional concealment of information about the product by such product seller.

(2) A product seller, other than a manufacturer, shall have the liability of a manufacturer to the claimant if:

(a) No solvent manufacturer who would be liable to the claimant is subject to service of process under the laws of the claimant's domicile or the state of Washington; or

(b) The court determines that it is highly probable that the claimant would be unable to enforce a judgment against any manufacturer; or

(c) The product seller is a controlled subsidiary of a manufacturer, or the manufacturer is a controlled subsidiary of the product seller; or

(d) The product seller provided the plans or specifications for the manufacture or preparation of the product and such plans or specifications were a proximate cause of the defect in the product; or

(e) The product was marketed under a trade name or brand name of the product seller. [1981 c 27 § 5.]

7.72.050 Relevance of industry custom, technological feasibility, and nongovernmental, legislative or administrative regulatory standards. (1) Evidence of custom in the product seller's industry, technological feasibility or that the product was or was not, in compliance with nongovernmental standards or with legislative regulatory standards or administrative regulatory standards, whether relating to design, construction or performance of the product or to warnings or instructions as to its use

may be considered by the trier of fact. (2) When the injury-causing aspect of the product was, at the time of manufacture, in compliance with a specific mandatory government contract specification relating to design or warnings, this compliance shall be an absolute defense. When the injury-causing aspect of the product was not, at the time of manufacture, in compliance with a specific mandatory government specification relating to design or warnings, the product shall be deemed not reasonably safe under RCW 7.72.030(1). [1981 c 27 § 6.]

7.72.060 Length of time product sellers are subject to liability. (1) Useful safe life. (a) Except as provided in subsection (1) (b) hereof, a product seller shall not be subject to liability to a claimant for harm under this chapter if the product seller proves by a preponderance of the evidence that the harm was caused after the product's "useful safe life" had expired.

"Useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner. For the purposes of this chapter, "time of delivery" means the time of delivery of a product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold. In the case of a product which has been remanufactured by a manufacturer, "time of delivery" means the time of delivery of the remanufactured product to its first purchaser or lessee who was not engaged in the business of either selling such products or using them as component parts of another product to be sold.

(b) A product seller may be subject to liability for harm caused by a product used beyond its useful safe life, if:

(i) The product seller has warranted that the product may be utilized safely for such longer period; or

(ii) The product seller intentionally misrepresents facts about its product, or intentionally conceals information about it, and that conduct was a proximate cause of the claimant's harm; or

(iii) The harm was caused by exposure to a defective product, which exposure first occurred within the useful safe life of the product, even though the harm did not manifest itself until after the useful safe life had expired.

(2) Presumption regarding useful safe life. If the harm was caused more than twelve years after the time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by a preponderance of the evidence.

(3) Statute of limitation. Subject to the applicable provisions of chapter 4.16 RCW pertaining to the tolling and extension of any statute of limitation, no claim under this chapter may be brought more than three years from the time the claimant discovered or in the exercise of due diligence should have discovered the harm and its cause. [1981 c 27 § 7.]

Chapter 7.75

DISPUTE RESOLUTION CENTERS

Sections

7.75.010	Legislative findings and intent.
7.75.020	Dispute resolution center—Creation—Plan— Approval by county or municipality—Annual report on operation of centers.
7.75.030	Services to be provided without charge or for fee based on ability to pay.
7.75.040	Dispute resolution agreements required—When ad- missible as evidence.
7.75.050	Confidentiality of centers' files, etc.—Exception— Privileged communications.
7.75.060	Withdrawal from dispute resolution process.
7.75.070	Centers may seek and expend funds.
7.75.080	Statutes of limitations tolled until dispute resolution process concluded.
7.75.090	Application of chapter.
7.75.100	Immunity from civil action.

7.75.010 Legislative findings and intent. (1) The legislature finds and declares that:

(a) The resolution of many disputes can be costly and complex in a judicial setting where the parties involved are necessarily in an adversary posture and subject to formalized procedures; and

(b) Alternative dispute resolution centers can meet the needs of Washington's citizens by providing forums in which persons may voluntarily participate in the resolution of disputes in an informal and less adversarial atmosphere.

(2) It is the intent of the legislature that programs established pursuant to this chapter:

(a) Stimulate the establishment and use of dispute resolution centers to help meet the need for alternatives to the courts for the resolution of certain disputes.

(b) Encourage continuing community participation in the development, administration, and oversight of local programs designed to facilitate the informal resolution of disputes between and among members of the community.

(c) Offer structures for dispute resolution which may serve as models for resolution centers in other communities.

(d) Serve a specific community or locale and resolve disputes that arise within that community or locale.

(e) Educate the community on ways of using the services of the neighborhood dispute resolution center directly and in a preventive capacity. [1984 c 258 § 501.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.020 Dispute resolution center—Creation—Plan—Approval by county or municipality—Annual report on operation of centers. (1) A dispute resolution center may be created and operated by a municipality, county, or by a corporation organized exclusively for the resolution of disputes or for charitable or educational purposes. The corporation shall not be organized for profit, and no part of the net earnings may inure to the benefit of any private shareholders or individuals. The majority of the directors of such a corporation shall not consist of members of any single profession.

(2) A dispute resolution center may not begin operation under this chapter until a plan for establishing a center for the mediation and settlement of disputes has been approved by the legislative authority of the municipality or county creating the center or, in the case of a center operated by a nonprofit corporation, by the legislative authority of the municipality or county within which the center will be located. A plan for a dispute resolution center shall not be approved and the center shall not begin operation until the legislative authority finds that the plan adequately prescribes:

(a) Procedures for filing requests for dispute resolution services with the center and for scheduling mediation sessions participated in by the parties to the dispute;

(b) Procedures to ensure that each dispute mediated by the center meets the criteria for appropriateness for mediation set by the legislative authority and for rejecting disputes which do not meet the criteria;

(c) Procedures for giving notice of the time, place, and nature of the mediation session to the parties, and for conducting mediation sessions that comply with the provisions of this chapter;

(d) Procedures which ensure that participation by all parties is voluntary;

(e) Procedures for obtaining referrals from public and private bodies;

(f) Procedures for meeting the particular needs of the participants, including, but not limited to, providing services at times convenient to the participants, in sign language, and in languages other than English;

(g) Procedures for providing trained and certified mediators who, during the dispute resolution process, shall make no decisions or determinations of the issues involved, but who shall facilitate negotiations by the participants themselves to achieve a voluntary resolution of the issues; and

(h) Procedures for informing and educating the community about the dispute resolution center and encouraging the use of the center's services in appropriate cases.

(3) A dispute resolution center established under this chapter annually shall provide to the administrator for the courts such data regarding its operation as the administrator requires. The administrator shall report annually beginning January 1, 1986, to the governor, the supreme court, and the legislature regarding the operation of centers established under this chapter. [1984 c 258 § 502.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.030 Services to be provided without charge or for fee based on ability to pay. A dispute resolution center established under this chapter shall provide dispute resolution services either without charge to the participants or for a fee which is based on the participant's ability to pay. [1984 c 258 § 503.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.040 Dispute resolution agreements required—
When admissible as evidence. (1) In conducting a dispute resolution process, a center established under this chapter shall require:

(a) That the disputing parties enter into a written agreement which expresses the method by which they shall attempt to resolve the issues in dispute; and

(b) That at the conclusion of the dispute resolution process, the parties enter into a written agreement which sets forth the settlement of the issues and the future responsibilities, if any, of each party.

(2) A written agreement entered into with the assistance of a center at the conclusion of the written dispute resolution process is admissible as evidence in any judicial or administrative proceeding. [1984 c 258 § 504.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.050 Confidentiality of centers' files, etc.—
Exception—Privileged communications. All memoranda, work notes or products, or case files of centers established under this chapter are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the center for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by any participant, mediator, or any other person is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding unless all parties to the communication waive the privilege. The foregoing privilege and limitation on evidentiary use does not apply to any communication of a threat that injury or damage may be inflicted on any person or on the property of a party to the dispute, to the extent the communication may be relevant evidence in a criminal matter. [1984 c 258 § 505.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.060 Withdrawal from dispute resolution process. Any person who voluntarily enters a dispute resolution process at a center established under this chapter may revoke his or her consent, withdraw from dispute resolution, and seek judicial or administrative redress prior to reaching a written resolution agreement. The withdrawal shall be in writing. No legal penalty, sanction, or restraint may be imposed upon the person. [1984 c 258 § 506.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.070 Centers may seek and expend funds. A dispute resolution center established under this chapter may seek and accept contributions from counties and municipalities, agencies of the state and federal governments, private sources, and any other available funds, and may expend the funds to carry out the purposes of this chapter. [1984 c 258 § 507.]

(1987 Ed.)

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.080 Statutes of limitations tolled until dispute resolution process concluded. Any applicable statute of limitations shall be tolled as to participants in dispute resolution at a center established under this chapter during the period which begins with the date of the participants' execution of the written agreement required by RCW 7.75.040(1)(a) and ends on the date that a written agreement at the conclusion of the dispute resolution process is executed under RCW 7.75.040(1)(b) or a participant's written notice of withdrawal from the dispute resolution process is executed under RCW 7.75.060. [1984 c 258 § 508.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.090 Application of chapter. Nothing in this chapter precludes any person or persons not operating under RCW 7.75.020 from providing dispute resolution services. However, the provisions of RCW 7.75.050, relating to confidentiality, and RCW 7.75.080, relating to statutes of limitation, apply only to proceedings conducted by a dispute resolution center established under this chapter. [1984 c 258 § 509.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

7.75.100 Immunity from civil action. (1) Members of the board of directors of a dispute resolution center are immune from suit in any civil action based upon any proceedings or other official acts performed in good faith as members of the board.

(2) Employees and volunteers of a dispute resolution center are immune from suit in any civil action based on any proceedings or other official acts performed in their capacity as employees or volunteers, except in cases of wilful or wanton misconduct.

(3) A dispute resolution center is immune from suit in any civil action based on any of its proceedings or other official acts performed by its employees, volunteers, or members or its board of directors, except (a) in cases of wilful or wanton misconduct by its employees or volunteers, and (b) in cases of official acts performed in bad faith by members of its board. [1986 c 95 § 2.]

Chapter 7.80 CIVIL INFRACTIONS

Sections

7.80.005	Legislative finding—1987 c 456.
7.80.010	Jurisdiction of courts.
7.80.020	Issuance of process.
7.80.030	Training of judicial officers.
7.80.040	"Enforcement officer" defined.
7.80.050	Notice of infraction—Issuance, service, filing.
7.80.060	Person receiving notice—Identification and detention.
7.80.070	Notice—Determination final unless contested— Form.

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- 7.80.080 Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear.
- 7.80.090 Hearings—Rules of procedure—Counsel.
- 7.80.100 Hearings—Contesting determination that infraction committed—Appeal.
- 7.80.110 Hearings—Explanation of mitigating circumstances.
- 7.80.120 Monetary penalties—Restitution.
- 7.80.130 Order of court—Civil nature—Modification of penalty—Community service.
- 7.80.140 Costs and attorney fees.
- 7.80.150 Notices—Record of—Cancellation prohibited, penalty—Audit.
- 7.80.160 Notice, failure to sign, nonappearance—Failure to satisfy penalty.
- 7.80.900 Decriminalization of certain municipal ordinances.
- 7.80.901 Effective date—1987 c 456 §§ 9–31.

7.80.005 Legislative finding—1987 c 456. The legislature finds that many minor offenses that are established as misdemeanors are obsolete or can be more appropriately punished by the imposition of civil fines. The legislature finds that some misdemeanors should be decriminalized to allow resources of the legal system, such as judges, prosecutors, juries, and jails, to be used to punish serious criminal behavior, since acts characterized as criminal behavior have a tremendous fiscal impact on the legal system.

The establishment of a system of civil infractions is a more expeditious and less expensive method of disposing of minor offenses and will decrease the cost and workload of the courts of limited jurisdiction. [1987 c 456 § 6.]

7.80.010 Jurisdiction of courts. (Effective January 1, 1989.) (1) All violations of state law, local law, ordinance, regulation, or resolution designated as civil infractions may be heard and determined by a district court, except as otherwise provided in this section.

(2) Any municipal court has the authority to hear and determine pursuant to this chapter civil infractions that are established by municipal ordinance and that are committed within the jurisdiction of the municipality.

(3) Any city or town with a municipal court under chapter 3.50 RCW may contract with the county to have civil infractions that are established by city or town ordinance and that are committed within the city or town adjudicated by a district court.

(4) District court commissioners have the authority to hear and determine civil infractions pursuant to this chapter.

(5) Nothing in this chapter prevents any city, town, or county from hearing and determining civil infractions pursuant to its own system established by ordinance. [1987 c 456 § 9.]

Task force on civil infractions—Established: "A task force on civil infractions is established. The membership of the task force is as follows: (1) Two members of the senate committee on judiciary selected by the chairman, one from each of the two major political parties; (2) two members of the house of representatives' committee on judiciary selected by the chairman, one from each of the two major political parties; (3) one person representing prosecuting attorneys selected by the Washington association of prosecuting attorneys; (4) one person representing municipal attorneys selected by the Washington state association of municipal attorneys; (5) one person representing cities selected by the association of Washington cities; (6) one person

representing counties selected by the Washington state association of counties; (7) one person representing law enforcement selected by the Washington association of sheriffs and police chiefs; (8) one person representing the courts of limited jurisdiction selected by the Washington state magistrates' association; (9) one person representing misdemeanor corrections officers selected by the Washington state misdemeanor corrections officers' association; (10) one person representing defense attorneys selected by the Washington defender association; and (11) one person representing court administrators selected by the Washington state association of court administrators.

Members of the task force shall select the chairperson. The staff of the house and senate judiciary committees shall serve as the staff for the task force. Members of the task force shall be reimbursed for travel expenses as provided in RCW 44.04.120, 43.03.050, and 43.03.060, respectively.

This section shall expire July 1, 1989." [1987 c 456 § 7.]

Task force on civil infractions—Study and report: "The task force shall study the various crimes designated as misdemeanors and gross misdemeanors in this state and determine if the offense should be classified as a civil infraction under this chapter or if the penalty for the offense should be eliminated or otherwise modified. In making these determinations, the task force shall consider the following: (1) The existing and predicted workload of the courts of limited jurisdiction; (2) the fiscal impact on the court system of characterizing certain behavior as criminal, including the cost of appointed counsel for indigents, jury trials, and jail facilities; (3) using resources of the legal system, such as judges, prosecutors, and juries, to punish minor offenses; (4) the willingness of prosecutors and judges to apply the sanctions of incarceration; (5) stigmas attached to persons convicted of violating criminal statutes; (6) the cost and benefits of implementing an alternative system for effectively and efficiently handling minor offenses; and (7) any other relevant factors affecting the classification.

The task force shall report its findings and recommendations to the legislature no later than June 30, 1989.

This section shall expire July 1, 1989." [1987 c 456 § 8.]

7.80.020 Issuance of process. (Effective January 1, 1989.) Notwithstanding any other provision of law governing service of process in civil cases, a court of limited jurisdiction having jurisdiction over an alleged civil infraction may issue process anywhere within the state. [1987 c 456 § 10.]

7.80.030 Training of judicial officers. (Effective January 1, 1989.) All judges and court commissioners adjudicating civil infractions shall complete such training requirements as are promulgated by the supreme court. [1987 c 456 § 11.]

7.80.040 "Enforcement officer" defined. (Effective January 1, 1989.) As used in this chapter, "enforcement officer" means a person authorized to enforce the provisions of the title or ordinance in which the civil infraction is established. [1987 c 456 § 12.]

7.80.050 Notice of infraction—Issuance, service, filing. (Effective January 1, 1989.) (1) A civil infraction proceeding is initiated by the issuance, service, and filing of a notice of civil infraction.

(2) A notice of civil infraction may be issued by an enforcement officer when the civil infraction occurs in the officer's presence.

(3) A court may issue a notice of civil infraction if an enforcement officer files with the court a written statement that the civil infraction was committed in the officer's presence or that the officer has reasonable cause to believe that a civil infraction was committed.

(4) Service of a notice of civil infraction issued under subsection (2) or (3) of this section shall be as provided by court rule. Until such a rule is adopted, service shall be as provided in JTIR 2.2(c)(1) and (3), as applicable.

(5) A notice of infraction shall be filed with a court having jurisdiction within forty-eight hours of issuance, excluding Saturdays, Sundays, and holidays. A notice of infraction not filed within the time limits prescribed in this section may be dismissed without prejudice. [1987 c 456 § 13.]

7.80.060 Person receiving notice—Identification and detention. (Effective January 1, 1989.) A person who is to receive a notice of civil infraction under RCW 7.80.050 is required to identify himself or herself to the enforcement officer by giving his or her name, address, and date of birth. Upon the request of the officer, the person shall produce reasonable identification, including a driver's license or identicaid.

A person who is unable or unwilling to reasonably identify himself or herself to an enforcement officer may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction.

Each agency authorized to issue civil infractions shall adopt rules on identification and detention of persons committing civil infractions. [1987 c 456 § 14.]

7.80.070 Notice—Determination final unless contested—Form. (Effective January 1, 1989.) (1) A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in this chapter.

(2) The form for the notice of civil 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 civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;

(b) A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;

(c) A statement of the specific civil infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the civil 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 civil infraction was committed and that the person may subpoena witnesses including the enforcement officer who issued the notice of civil infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the civil infraction, the person will be deemed to have committed the civil 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;

(i) A statement that failure to respond to the notice or a 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 a default judgment against the person in the amount of the penalty and that this failure may be referred to the prosecuting attorney for criminal prosecution for failure to respond or appear;

(j) A statement, which the person shall sign, that the person promises to respond to the notice of civil infraction in one of the ways provided in this chapter;

(k) A statement that failure to respond to a notice of civil infraction as promised or to appear at a requested hearing is a misdemeanor and may be punished by a fine or imprisonment in jail. [1987 c 456 § 15.]

7.80.080 Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear. (Effective January 1, 1989.) (1) Any person who receives a notice of civil infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the civil infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of civil infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the civil infraction must be submitted with the response. The clerk of a court may accept cash in payment for an infraction. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records.

(3) If the person determined to have committed the civil infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of hearing, except by agreement.

(4) If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of hearing, except by agreement.

(5) The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction and may notify the prosecuting attorney of the failure to respond to the notice of civil infraction or to appear at a

requested hearing if any person issued a notice of civil infraction:

(a) Fails to respond to the notice of civil infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section. [1987 c 456 § 16.]

7.80.090 Hearings—Rules of procedure—Counsel. (Effective January 1, 1989.) (1) Procedures for the conduct of all hearings provided in this chapter may be established by rule of the supreme court.

(2) Any person subject to proceedings under this chapter may be represented by counsel.

(3) The attorney representing the state, county, city, or town may appear in any proceedings under this chapter but need not appear, notwithstanding any statute or rule of court to the contrary. [1987 c 456 § 17.]

7.80.100 Hearings—Contesting determination that infraction committed—Appeal. (Effective January 1, 1989.) (1) A hearing held for the purpose of contesting the determination that a civil infraction has been committed shall be without a jury and shall be recorded in the manner provided for in courts of limited jurisdiction.

(2) The court may consider the notice of civil infraction and any other written report made under oath submitted by the enforcement officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may request the court for issuance of subpoena of witnesses, including the enforcement officer who issued the notice, and has the right to present evidence and examine witnesses present in court.

(3) The burden of proof is upon the state to establish the commission of the civil infraction by a preponderance of the evidence.

(4) After consideration of the evidence and argument, the court shall determine whether the civil infraction was committed. Where it has not been established that the civil infraction was committed, an order dismissing the notice shall be entered in the court's records. Where it has been established that the civil infraction was committed, an appropriate order shall be entered in the court's records.

(5) An appeal from the court's determination or order shall be to the superior court in the manner provided by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The decision of the superior court is subject only to discretionary review pursuant to the Rules of Appellate Procedure. [1987 c 456 § 18.]

7.80.110 Hearings—Explanation of mitigating circumstances. (Effective January 1, 1989.) (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of a civil infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(2) After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's records.

(3) There is no appeal from the court's determination or order. [1987 c 456 § 19.]

7.80.120 Monetary penalties—Restitution. (Effective January 1, 1989.) (1) A person found to have committed a civil infraction shall be assessed a monetary penalty.

(a) The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars, not including statutory assessments;

(b) The maximum penalty and the default amount for a class 2 civil infraction shall be one hundred twenty-five dollars, not including statutory assessments;

(c) The maximum penalty and the default amount for a class 3 civil infraction shall be fifty dollars, not including statutory assessments; and

(d) The maximum penalty and the default amount for a class 4 civil infraction shall be twenty-five dollars, not including statutory assessments.

(2) The supreme court shall prescribe by rule the conditions under which local courts may exercise discretion in assessing fines for civil infractions.

(3) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting authority of the failure to pay.

(4) The court may also order a person found to have committed a civil infraction to make restitution. [1987 c 456 § 20.]

7.80.130 Order of court—Civil nature—Modification of penalty—Community service. (Effective January 1, 1989.) (1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the civil infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

(2) The court may waive, reduce, or suspend the monetary penalty prescribed for the civil infraction. If the court determines that a person has insufficient funds to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour. [1987 c 456 § 21.]

7.80.140 Costs and attorney fees. (Effective January 1, 1989.) Each party to a civil infraction case is responsible for costs incurred by that party, but the court may assess witness fees against a nonprevailing respondent. Attorney fees may be awarded to either party in a civil infraction case. [1987 c 456 § 22.]

7.80.150 Notices—Record of—Cancellation prohibited, penalty—Audit. (Effective January 1, 1989.) Every law enforcement agency in this state or other agency authorized to issue notices of civil infractions shall provide in appropriate form notices of civil infractions which shall be issued in books with notices in quadruplicate and meeting the requirements of this section.

The chief administrative officer of every such agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each notice contained therein issued to individual members or employees of the agency and shall require and retain a receipt for every book so issued.

Every law enforcement officer or other person upon issuing a notice of civil infraction to an alleged perpetrator of a civil infraction under the laws of this state or of any ordinance of any city or town shall deposit the original or a copy of such notice of civil infraction with a court having competent jurisdiction over the civil infraction, as provided in RCW 7.80.050.

Upon the deposit of the original or a copy of such notice of civil infraction with a court having competent jurisdiction over the civil infraction, the original or copy may be disposed of only as provided in this chapter.

It is official misconduct for any law enforcement officer or other officer or public employee to dispose of a notice of civil infraction or copies thereof or of the record of the issuance of the same in a manner other than as required in this section.

The chief administrative officer of every law enforcement agency or other agency authorized to issue notices of civil infractions shall require the return to him or her of a copy of every notice issued by a person under his or her supervision to an alleged perpetrator of a civil infraction under any law or ordinance and of all copies of every notice which has been spoiled or upon which any entry has been made and not issued to an alleged perpetrator.

Such chief administrative officer shall also maintain or cause to be maintained in connection with every notice issued by a person under his or her supervision a record of the disposition of the charge by the court in which the original or copy of the notice was deposited.

Any person who cancels or solicits the cancellation of any notice of civil infraction, in any manner other than as provided in this section, is guilty of a misdemeanor.

Every record of notices required in this section shall be audited monthly by the appropriate fiscal officer of the government agency to which the law enforcement agency or other agency authorized to issue notices of civil infractions is responsible. [1987 c 456 § 23.]

7.80.160 Notice, failure to sign, nonappearance—Failure to satisfy penalty. (Effective January 1, 1989.)

(1) A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.

(2) Any person wilfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the

disposition of the notice of civil infraction: *Provided*, That a written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by an appearance by counsel.

(3) A person who wilfully fails to pay a monetary penalty or to perform community service as required by a court under this chapter may be found in civil contempt of court after notice and hearing. [1987 c 456 § 24.]

7.80.900 Decriminalization of certain municipal ordinances. (Effective January 1, 1989.) Any municipal criminal ordinance in existence on the January 1, 1989, which is the same as or substantially similar to a statute which is decriminalized by *sections 25 through 30 and 32 of this act is deemed to be civil in nature and shall be punished as provided in this chapter. [1987 c 456 § 31.]

*Reviser's note: For codification of "sections 25 through 30 and 32 of this act" see Codification Tables, Volume 0.

7.80.901 Effective date—1987 c 456 §§ 9–31. Sections 9 through 31 of this act shall take effect January 1, 1989. [1987 c 456 § 34.]

Chapter 7.84

NATURAL RESOURCE INFRACTIONS

Sections	
7.84.010	Legislative declaration.
7.84.020	"Infraction" defined.
7.84.030	Notice of infraction—Issuance, service, filing—Penalty.
7.84.040	Jurisdiction of court—Venue.
7.84.050	Notice—Determination final unless contested—Form.
7.84.060	Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear—Penalty.
7.84.070	Hearings—Rules of procedure—Counsel.
7.84.080	Hearings—Contesting determination that infraction committed—Appeal.
7.84.090	Hearings—Explanation of mitigating circumstances.
7.84.100	Monetary penalties.
7.84.110	Order of court—Civil nature—Modification of penalty—Community service.
7.84.120	Issuance of process.
7.84.130	Failure to pay or complete community service—Penalty.
7.84.900	Effective date—1987 c 380.
7.84.901	Severability—1987 c 380.

7.84.010 Legislative declaration. The legislature declares that decriminalizing certain offenses contained in Titles 75, 76, 77, and 79 RCW and chapters 43.30 and 43.51 RCW and any rules adopted pursuant to those titles and chapters would promote the more efficient administration of those titles and chapters. The purpose of this chapter is to provide a just, uniform, and efficient procedure for adjudicating those violations which, in any of these titles and chapters or rules adopted under these chapters or titles, are declared not to be criminal offenses. The legislature respectfully requests the supreme court to prescribe any rules of procedure necessary to implement this chapter. [1987 c 380 § 1.]

7.84.020 "Infraction" defined. Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Infraction" means an offense which, by the terms of Title 75, 76, 77, or 79 RCW or chapter 43.30 or 43.51 RCW and rules adopted under these titles and chapters, is declared not to be a criminal offense and is subject to the provisions of this chapter. [1987 c 380 § 2.]

7.84.030 Notice of infraction—Issuance, service, filing—Penalty. (1) An infraction proceeding is initiated by the issuance, service, and filing of a 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 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 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.

(6) Failure to sign an infraction notice shall constitute a misdemeanor under chapter 9A.20 RCW. [1987 c 380 § 3.]

7.84.040 Jurisdiction of court—Venue. (1) Infraction proceedings may be heard and determined by a district court.

(2) Infraction proceedings shall be brought in the district court district in which the infraction occurred. If an infraction takes place in the offshore waters, as defined in RCW 75.08.011, the infraction proceeding may be brought in any county bordering on the Pacific Ocean. [1987 c 380 § 4.]

7.84.050 Notice—Determination final unless contested—Form. (1) A notice of infraction represents a determination that an infraction has been committed. The determination shall be final unless contested as provided in this chapter.

(2) The form for the notice of 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 an 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 an infraction is a noncriminal offense for which imprisonment will not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the 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 shall be deemed to have committed the infraction and shall not subpoena witnesses;

(h) A statement that failure to respond to a notice of infraction within fifteen days is a misdemeanor and may be punished by fine or imprisonment;

(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 is a misdemeanor and may be punished by fine or imprisonment; and

(j) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter. [1987 c 380 § 5.]

7.84.060 Response to notice—Contesting determination—Mitigating circumstances—Hearing—Failure to respond or appear—Penalty. (1) Any person who receives a notice of infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction shall be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records.

(3) If the person determined to have committed the infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court

shall notify the person in writing of the time, place, and date of the hearing.

(5) If any person issued a notice of infraction: (a) Fails to respond to the notice of infraction as provided in subsection (2) of this section, or (b) fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section, the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and any other penalty authorized by this chapter. In addition, failure to respond to a notice of infraction, as required by this chapter, and failure to appear at a hearing requested pursuant to subsection (3) or (4) of this section are each punishable as a misdemeanor under chapter 9A.20 RCW. [1987 c 380 § 6.]

7.84.070 Hearings—Rules of procedure—Counsel. (1) Procedures for the conduct of all hearings provided for in this chapter may be established by rule of the supreme court.

(2) Any person subject to proceedings under this chapter may be represented by counsel. [1987 c 380 § 7.]

7.84.080 Hearings—Contesting determination that infraction committed—Appeal. (1) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

(2) The court may consider the notice of infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court. The rules of evidence shall apply to contested hearings.

(3) The burden of proof is upon the state to establish the commission of the infraction by a preponderance of the evidence.

(4) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. Where it has been established that the infraction was committed, the court may assess a monetary penalty not exceeding that provided for the infraction in the applicable court rule or statute and shall enter an appropriate order.

(5) An appeal from the court's determination or order shall be to the superior court. A defendant may appeal a judgment entered after a contested hearing finding that the defendant has committed the infraction. The plaintiff may appeal a decision which in effect abates, discontinues, or determines the case other than by a judgment that the defendant has not committed an infraction. No other orders or judgments are appealable by either party. The decision of the superior court is subject only to discretionary review pursuant to the rules of appellate procedure. [1987 c 380 § 8.]

7.84.090 Hearings—Explanation of mitigating circumstances. (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed shall not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(2) After the court has heard the explanation of the circumstances surrounding the commission of the infraction, it may assess a monetary penalty not exceeding that provided for the infraction in rules adopted pursuant to this chapter and shall enter an appropriate order.

(3) There may be no appeal from the court's determination or order. [1987 c 380 § 9.]

7.84.100 Monetary penalties. (1) A person found to have committed an infraction shall be assessed a monetary penalty. No penalty may exceed five hundred dollars for each offense unless specifically authorized by statute.

(2) The supreme court may prescribe by rule a schedule of monetary penalties for designated infractions. The legislature requests the supreme court to adjust this schedule every two years for inflation. The maximum penalty imposed by the schedule shall be five hundred dollars per infraction and the minimum penalty imposed by the schedule shall be ten dollars per infraction. This schedule may be periodically reviewed by the legislature and is subject to its revision.

(3) Whenever a monetary penalty is imposed by a court under this chapter, it is immediately payable. If the person is unable to pay at that time, the court may, in its discretion, grant an extension of the period in which the penalty may be paid. [1987 c 380 § 10.]

7.84.110 Order of court—Civil nature—Modification of penalty—Community service. (1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances, is civil in nature.

(2) The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour. [1987 c 380 § 11.]

7.84.120 Issuance of process. A court of limited jurisdiction having jurisdiction over an alleged infraction may issue process anywhere within the state. [1987 c 380 § 12.]

7.84.130 Failure to pay or complete community service—Penalty. (1) Failure to pay a monetary penalty assessed by a court under the provisions of this chapter is a misdemeanor under chapter 9A.20 RCW.

(2) Failure to complete community service ordered by a court under the provisions of this chapter is a misdemeanor under chapter 9A.20 RCW. [1987 c 380 § 13.]

7.84.900 Effective date—1987 c 380. This act shall take effect January 1, 1988. [1987 c 380 § 21.]

7.84.901 Severability—1987 c 380. 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. [1987 c 380 § 22.]

Title 8

EMINENT DOMAIN

Chapters

- 8.04** Eminent domain by state.
- 8.08** Eminent domain by counties.
- 8.12** Eminent domain by cities.
- 8.16** Eminent domain by school districts.
- 8.20** Eminent domain by corporations.
- 8.24** Private ways of necessity.
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- 8.26** Relocation assistance—Real property acquisition policy.
- 8.28** Miscellaneous provisions.

Access to state timber and other valuable material: Chapter 76.16 RCW.

Cemetery districts—Eminent domain: RCW 68.52.200.

Counties, eminent domain by for park and playground systems: RCW 36.68.010.

Diking and drainage districts

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in two or more counties—Eminent domain: RCW 85.24.260 through 85.24.265.

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East capitol site, eminent domain authorized for acquisition of: RCW 79.24.520.

Eminent domain

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state Constitution Art. 1 § 16 (Amendment 9).

telegraph and telephone companies, right of: State Constitution Art. 12 § 19.

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Fire protection districts, acquisition by: Chapters 52.04, 52.12 RCW.

Flood control districts—Right of eminent domain: RCW 86.09.202 through 86.09.223.

Gas companies, eminent domain: RCW 80.28.220, 80.28.230.

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Public hospital districts—Powers: RCW 70.44.060.

Public utility districts—Eminent domain: Chapters 54.16, 54.20 RCW.

Public waterways—Right of eminent domain: RCW 91.08.100 through 91.08.260.

Reclamation districts—Powers, eminent domain: RCW 89.30.130, 89.30.184 through 89.30.208.

Right of county-wide utility district to acquire distribution properties: RCW 54.32.040.

Road improvement districts—Eminent domain: RCW 36.88.310.

Sewer districts—Eminent domain: RCW 56.08.010.

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Toll bridge, acquisition of right of way for: RCW 47.56.090.

Toll roads—Eminent domain: RCW 47.56.090, 47.56.400.

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Underground storage of natural gas, eminent domain for: RCW 80.40.030.

Urban renewal law, eminent domain: RCW 35.81.080.

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Chapter 8.04

EMINENT DOMAIN BY STATE

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- 8.04.020 Notice—Contents—Service—Publication.
- 8.04.060 Adjournment of proceedings—Further notice.
- 8.04.070 Hearing—Order adjudicating public use.
- 8.04.080 Order to direct determination of damages and offsetting benefits.
- 8.04.090 Order for immediate possession—Payment of tender into court.
- 8.04.092 Determination of adequacy of payment—Jury trial—Costs.
- 8.04.094 Demand for trial—Time of trial—Decree of appropriation.
- 8.04.097 Acquisition when several ownerships.
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Additional provisions applicable to eminent domain proceedings: Chapter 8.25 RCW.

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Department of fisheries—Acquisition of lands, water rights, rights-of-way, personal property: RCW 75.08.040.

Department of transportation—Acquisition of airports, facilities—Condemnation: RCW 47.68.100, 47.68.120.

Department of wildlife, acquisition of property for: RCW 77.12.200.

Parks and recreation commission—Powers: RCW 43.51.040(7).

Puget Sound ferry and toll bridge system—Eminent domain, condemnation proceedings: RCW 47.60.020.

Relocation assistance: Chapter 8.26 RCW.

State highways, acquisition of property for—Condemnation: Chapter 47.12 RCW.

8.04.010 Petition for appropriation—Contents. Whenever any officer, board, commission, or other body representing the state is authorized by the legislature to acquire any land, real estate, premises, or other property, deemed necessary for the public uses of the state, or any department or institution thereof, the attorney general shall present to the superior court of the county in which the land, real estate, premises, or other property so sought to be acquired or appropriated is situated, a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested therein, or any part thereof, insofar as can be ascertained from the public records, the object for which the property is sought to be appropriated, and praying that a jury be impanelled to ascertain and determine the compensation to be made in money to such owner or owners, respectively, and to all tenants, encumbrancers, and others interested, for taking such land, real estate, premises, or other property, or in case a jury is waived, as in other civil cases in courts of record, in the manner prescribed by law, then that the compensation to be made as aforesaid be ascertained and determined by the court. [1955 c 156 § 6; 1911 c 64 § 1; 1891 c 74 § 1; RRS § 891.]

8.04.020 Notice—Contents—Service—Publication. A notice stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be acquired and appropriated, and stating the time and place when and where the same will be presented to the court or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or, in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or, in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary or other director or trustee of such corporation. In case of persons under the age of eighteen years, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such person; in case of idiots, lunatics or distracted persons, on their guardians, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated is school or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be acquired and appropriated is situated. In all cases where the owner or person claiming an interest in such real estate or other property is a nonresident of this

state, or where the residence of such owner or person is unknown, and an affidavit of the attorney general shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained, service may be made by publication thereof in any newspaper published in the county where such lands are situated once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest the county in which lies the land sought to be acquired and appropriated. And such publication shall be deemed service upon each of such nonresident person or persons whose residence is unknown. Such notice shall be signed by the attorney general of the state of Washington. Such notice may be served by any competent person eighteen years of age or over. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, order and other papers in the proceedings, authorized by RCW 8.04.010 through 8.04.160, may be made as the superior court or judge thereof may direct. [1971 ex.s. c 292 § 10; 1891 c 74 § 2; RRS § 892. Formerly RCW 8.04.020, 8.04.030, 8.04.040, 8.04.050.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Publication of legal notices: Chapter 65.16 RCW.

Publication of notice in eminent domain proceedings: RCW 4.28.120.

Service of process where state land is involved: RCW 8.28.010.

8.04.060 Adjournment of proceedings—Further notice. The court or judge may, upon application of the said attorney general or any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected. [1891 c 74 § 3; RRS § 893.]

8.04.070 Hearing—Order adjudicating public use. At the time and place appointed for hearing the petition, or to which the hearing may have been adjourned, if the court has satisfactory proof that all parties interested in the lands, real estate, premises or other property described in the petition have been duly served with the notice, and is further satisfied by competent proof that the contemplated use for which the lands, real estate, premises, or other property are sought to be appropriated is really necessary for the public use of the state, it shall make and enter an order, to be recorded in the minutes of the court, and which order shall be final unless review thereof to the supreme court or the court of appeals of the state is taken within five days after entry thereof, adjudicating that the contemplated use for

which the lands, real estate, premises or other property are sought to be appropriated is really a public use of the state. [1971 c 81 § 33; 1955 c 213 § 2. Prior: 1925 ex.s. c 98 § 1, part; 1891 c 74 § 4, part; RRS § 894, part.]

Rules of court: Writ procedure superseded by RAP 2.1, 2.2(a)(4), 5.2, 18.22.

8.04.080 Order to direct determination of damages and offsetting benefits. The order shall direct that determination be had of the compensation and damages to be paid all parties interested in the land, real estate, premises or other property sought to be appropriated for the taking and appropriation thereof, together with the injury, if any, caused by such taking and appropriation to the remainder of the lands, real estate, premises, or other property from which the same is to be taken and appropriated after offsetting against any and all such compensation and damages the special benefits, if any, accruing to such remainder by reason of the appropriation and the use by the state of the lands, real estate, premises, and other property described in the petition. The determination shall be made within thirty days after the entry of such order, before a jury if trial by jury is demanded at the hearing either by the petitioner or by the respondents, otherwise by the court sitting without a jury. If no regular venire has been called so as to be available to serve within such time on application of the petitioner at the hearing, the court may by its order continue such determination to the next regular jury term if a regular venire will be called within sixty days, otherwise the court shall call a special jury within said sixty days and direct the sheriff to summon, from the citizens of the county in which the lands, real estate, premises, or other property sought to be appropriated are situated, as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the petitioner and respondents both consent to a less number of jurors (such number to be not less than three), and such consent is entered by the clerk in the minutes of such hearing. In any third class county or lesser classification, the costs of such special jury for the trial of such condemnation cases only shall be borne by the state. [1955 c 213 § 3. Prior: 1925 ex.s. c 98 § 1, part; 1891 c 74 § 4, part; RRS § 894, part.]

Rules of court: CR 47, 48.

Petit jury defined: RCW 2.36.050.

8.04.090 Order for immediate possession—Payment of tender into court. In case the state shall require immediate possession and use of the property sought to be condemned, and an order of necessity shall have been granted, and no review has been taken therefrom, the attorney general may stipulate with respondents in accordance with the provisions of this section and RCW 8.04.092 and 8.04.094 for an order of immediate possession and use, and file with the clerk of the court wherein the action is pending, a certificate of the state's requirement of immediate possession and use of the land, which shall state the amount of money offered to the respondents and shall further state that such offer constitutes a

continuing tender of such amount. The attorney general shall file a copy of the certificate with the office of financial management, which forthwith shall issue and deliver to him a warrant payable to the order of the clerk of the court wherein the action is pending in a sum sufficient to pay the amount offered, which shall forthwith be paid into the registry of the court. The court without further notice to respondent shall enter an order granting to the state the immediate possession and use of the property described in the order of necessity, which order shall bind the petitioner to pay the full amount of any final judgment of compensation and damages which may thereafter be awarded for the taking and appropriation of the lands, real estate, premises, or other property described in the petition and for the injury, if any, to the remainder of the lands, real estate, premises, or other property from which they are to be taken by reason of such taking and appropriation, after offsetting against any and all such compensation and damages the special benefits, if any, accruing to such remainder by reason of the appropriation and use by the state of the lands, real estate, premises, or other property described in the petition. The moneys paid into court may at any time after entry of the order of immediate possession, be withdrawn by respondents, by order of the court, as their interests shall appear. [1979 c 151 § 7; 1973 c 106 § 7; 1955 c 213 § 4. Prior: 1951 c 177 § 1; 1925 ex.s. c 98 § 1, part; RRS § 894, part.]

8.04.092 Determination of adequacy of payment—Jury trial—Costs. The amount paid into court shall constitute just compensation paid for the taking of such property: *Provided*, That respondents may, in the same action, request a trial for the purpose of assessing the amount of compensation to be made and the amount of damages arising from the taking. At the trial, the date of valuation of the property shall be the date of entry of the order granting to the state immediate possession and use of the property. If, pursuant to such hearing, the verdict of the jury, unless a jury is waived by all parties, or decision of the court, awards respondents an amount in excess of the tender, the court shall order the excess paid to respondents with interest thereon from the time of the entry of the order of immediate possession, and shall charge the costs of the action to the state. If, pursuant to the trial, the verdict of the jury or decision of the court awards respondents an amount equal to the tender, the costs of the action shall be charged to the state, and if the verdict or decision awards an amount less than the amount of the tender, the state shall be taxed for costs and the state, if respondents have accepted the tender and withdrawn the amount paid into court, shall be entitled to a judgment for the difference; otherwise, the excess on deposit shall be returned to the state. [1983 c 140 § 1; 1955 c 155 § 1; 1951 c 177 § 2.]

8.04.094 Demand for trial—Time of trial—Decree of appropriation. If any respondent shall elect to demand a trial for the purpose of assessing just compensation and damages arising from the taking, he shall so

move within sixty days from the date of entry of the order of immediate possession and use, and the issues shall be brought to trial within one year from the date of such order unless good and sufficient proof shall be offered and it shall appear therefrom to the court that the hearing could not have been held within said year. In the event that no such demand be timely made or having been timely made, shall not be brought to trial within the limiting period, the court, upon application of the state, shall enter a decree of appropriation for the amount paid into court under the provisions of RCW 8.04.090, as the total sum to which respondents are entitled, and such decree shall be final and nonappealable. [1951 c 177 § 3.]

8.04.097 Acquisition when several ownerships. Whenever it becomes necessary on behalf of the state to acquire by condemnation more than one tract of land, property, or property rights, existing in any one county, and held in different ownerships or interests, the state may consolidate and file a single petition as one action against the several tracts of land, property, or property rights held by said different ownerships or interests, setting forth separately the descriptions of the tracts of land, property, or property rights needed, and the owners, persons, or parties interested therein. [1955 c 156 § 1. Formerly RCW 8.04.190.]

8.04.098 Acquisition when several ownerships—Public use. At the time and place appointed for hearing the petition, the court may enter an order adjudicating public use as affecting all tracts of land, property, or property rights as described therein, which order shall be final as to those respondents not seeking a review to the supreme court or the court of appeals within five days after the entry thereof. [1971 c 81 § 34; 1955 c 156 § 2. Formerly RCW 8.04.200.]

8.04.099 Acquisition when several ownerships—Selection of single jury. Thereafter, if requested by the state, a single jury shall be selected to hear and determine in separate trials, the amount of compensation and damages, if any, that shall be paid for the different tracts, parcels, property, or property rights, as set forth in the petition. [1955 c 156 § 3. Formerly RCW 8.04.210.]

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

8.04.100 Cases may be consolidated for trial. At the time of fixing the date for trial by jury in any case the court may, on application of the petitioner, order that any one or more condemnation cases then pending before the court and requiring determination by a jury of the compensation and damages as aforesaid be consolidated and tried before one and the same jury but with a separate award to be made in each case. If necessary, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from citizens of the county where such lands, real estate, premises or other property

sought to be appropriated are situated. [1955 c 213 § 5. Prior: 1925 ex.s. c 98 § 1, part; RRS § 894, part.]

8.04.110 Trial—Damages to be found. A judge of the superior court shall preside at the trial to determine the compensation and damage to be awarded, which trial shall be held at the court house in the county where the land, real estate, premises or other property sought to be appropriated or acquired is situated: and in the case of each such trial by jury the jurors by their verdict shall fix as a lump sum the total amount of damages which shall result to all persons or parties and to any county and to all tenants, encumbrancers and others interested therein, by reason of the appropriation and use of the lands, real estate, premises or other property sought to be appropriated or acquired. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in each proceeding shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. In case a jury is not demanded as provided for in *section 894 such total amount of damages shall be ascertained and determined by the court or judge thereof and the proceedings shall be the same as in trials of an issue of fact by the court. [1925 ex.s. c 98 § 2; 1891 c 74 § 5; RRS § 895.]

**Reviser's note:* "section 894" refers to RRS § 894 herein codified (as amended) as RCW 8.04.070, 8.04.080, 8.04.090 and 8.04.100.

Rules of court: CR 26 through 37.

Witnesses, examination of: Title 5 RCW.

8.04.112 Damages to buildings. If there is a building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken, the damages to the building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, and the state agrees thereto, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of the building by reason of such readjustment or moving. [1955 c 156 § 4.]

8.04.114 Damages to buildings—Where based on readjustment or moving. If damages are based upon readjustment or moving of building or buildings, the court shall order and fix the time in the judgment and decree of appropriation within which any such building must be moved or readjusted. Upon failure to comply with said order, the state may move said building upon respondent's remaining land and recover its costs and expenses incidental thereto. The state shall have a lien upon the building and the remaining land from the date of the judgment and decree of appropriation for the necessary costs and expenses of removal until the order of the court has been complied with. The amount of the lien and satisfaction thereof shall be by application and entry

of a supplemental judgment in said proceedings and execution thereon. [1955 c 156 § 5.]

8.04.120 Judgment—Decree of appropriation—Recording. At the time of rendering judgment for damages, whether upon default or trial, the court or judge thereof shall also enter a judgment or decree of appropriation of the land, real estate or premises sought to be appropriated, thereby vesting the legal title to the same in the state of Washington. Whenever said judgment or decree of appropriation is made, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate or other premises are situated, and shall be recorded by said auditor like a deed of real estate, and with like effect. [1891 c 74 § 6; RRS § 896.]

Recording of deeds of real estate: Title 65 RCW.

8.04.130 Payment of damages—Effect—Costs—Appeal. Upon the entry of judgment upon the verdict of the jury or the decision of the court awarding damages, the state may make payment of the damages and the costs of the proceedings by depositing them with the clerk of the court, to be paid out under the direction of the court or judge thereof; and upon making such payment into court of the damages assessed and allowed for any land, real estate, premises, or other property mentioned in the petition, and of the costs, the state shall be released and discharged from any and all further liability therefor, unless upon appeal the owner or party interested recovers a greater amount of damages; and in that case the state shall be liable only for the amount in excess of the sum paid into court and the costs of appeal.

In the event of an appeal to the supreme court or the court of appeals of the state by any party to the proceedings, the moneys paid into the superior court by the state pursuant to this section shall remain in the custody of the court until the final determination of the proceedings by the supreme court or the court of appeals. [1971 c 81 § 35; 1951 c 177 § 4; 1925 ex.s. c 98 § 3; 1891 c 74 § 7; RRS § 897.]

8.04.140 Claimants, payment of—Conflicting claims. Any person, corporation or county claiming to be entitled to any money paid into court, as provided in RCW 8.04.010 through 8.04.160, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the court or judge thereof should decide that the title to the land, real estate or premises specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [1891 c 74 § 8; RRS § 898.]

8.04.150 Appeal. Either party may appeal from the judgment for damages entered in the superior court, to the supreme court or the court of appeals of the state, within thirty days after the entry of judgment as aforesaid, and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the amount of damages in respect to the parties to the appeal: *Provided however*, That upon such appeal no bond shall be required: *And provided further*, That if the owner of land, the real estate or premises accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed thereby to have waived conclusively an appeal to the supreme court or the court of appeals, and final judgment by default may be rendered in the superior court as in other cases: *Provided further*, That no appeal shall operate so as to prevent the said state of Washington from taking possession of such property pending such appeal after the amount of said award shall have been paid into court. [1971 c 81 § 36; 1891 c 74 § 9; RRS § 899.]

Rules of court: Cf. RAP 5.2, 8.1, 18.22.

8.04.160 Award, how paid into court. Whenever the attorney general shall file with the director of financial management a certificate setting forth the amount of any award found against the state of Washington under the provisions of RCW 8.04.010 through 8.04.160, together with the costs of said proceeding, and a description of the lands and premises sought to be appropriated and acquired, and the title of the action or proceeding in which said award is rendered, it shall be the duty of the office of financial management to forthwith issue a warrant upon the state treasury to the order of the attorney general in a sum sufficient to make payment in money of said award and the costs of said proceeding, and thereupon it shall be the duty of said attorney general to forthwith pay to the clerk of said court in money the amount of said award and costs. [1979 c 151 § 8; 1973 c 106 § 8; 1891 c 74 § 10; RRS § 900.]

8.04.170 Condemnation for military purposes. Whenever the governor, as commander-in-chief of the military of this state, shall deem it necessary to acquire any lands, real estate, premises or other property for any military purpose or purposes of this state, either to add to, enlarge, increase or otherwise improve state military facilities now or hereafter existing or to establish new facilities, the acquisition of which shall have been provided for by the state, by a county or by a city, or by either, all or any thereof, upon certificate by the governor of such necessity, proceedings for the condemnation, appropriation and taking of the lands, real estate, premises or other property so certified to be necessary shall be taken as follows:

Where the state is to pay the purchase price it shall be the duty of the attorney general, upon receipt by him of said certificate of the governor, to file a petition in the superior court for the county in which such lands, real estate, premises or other property may be situate praying such condemnation, appropriating and taking, which petition shall be prosecuted to a final determination in

the manner by law provided for other condemnation suits brought by or on behalf of the state;

Where a county is to pay the purchase price it shall be the duty of the prosecuting attorney of said county upon receipt by him of said certificate of the governor, to file a petition in the superior court for said county praying such condemnation, appropriation and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of a county;

Where a city is to pay the purchase price it shall be the duty of the corporation counsel, city attorney or other head of the legal department of said city, upon receipt by him of said certificate of the governor, to file a petition in the superior court for the county in which said city is situate, praying such condemnation, appropriation and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of such city;

Where the purchase price is to be paid by the state, a county and a city or by the state and a county, or by the state and a city, or by a county and a city, the condemnation shall be prosecuted to a final determination in the manner by law provided for either or any thereof, as the governor may determine, which determination shall be final and conclusive. [1917 c 153 § 1; RRS § 900-1.]

Notice where military land is involved: RCW 8.28.030.

8.04.180 Condemnation for military purposes—Construction. Nothing contained in RCW 8.04.170 shall be construed as in any manner applying to condemnation by any county for the purpose of acquiring title to any site for a mobilization, training and supply station, to be donated by any county to the United States. [1917 c 153 § 2; RRS § 900-2.]

8.04.191 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.08

EMINENT DOMAIN BY COUNTIES

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Wharves and landings—Easement by condemnation: RCW 88.24.070.

8.08.010 Condemnation authorized for general county purposes—Petition. Every county is hereby authorized and empowered to condemn land and property within the county for public use; whenever the board of county commissioners deems it necessary for county purposes to acquire such land, real estate, premises or other property, and is unable to agree with the owner or owners thereof for its purchase, it shall be the duty of the prosecuting attorney to present to the superior court of the county in which said land, real estate, premises, or other property so sought to be acquired or appropriated shall be situated, a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money to such owner or owners respectively, and to all tenants, encumbrancers, or others interested, for taking such lands, real estate, premises, or other property, or in case a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law, then that the compensation to be made as aforesaid be ascertained or determined by the court or the judge thereof. [1949 c 79 § 1; Rem. Supp. 1949 § 3991-6.]

8.08.020 Public use declared. Any condemnation, appropriation or disposition intended in RCW 8.08.010 through 8.08.080 shall be deemed and held to be for a county purpose and public use within the meaning of RCW 8.08.010 through 8.08.080 when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof. [1949 c 79 § 2; Rem. Supp. 1949 § 3991-7.]

8.08.030 Notice of presentation of petition. A notice, stating the time and place when and where such petition shall be presented to the court or the judge thereof, together with a copy of such petition, shall be served on each and every person named therein as owner or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of

such petition. Such notice shall be signed by the prosecuting attorney of the county wherein the real estate or property sought to be taken is situated, and may be served in the same manner as a summons in a civil action in such superior court is authorized by law to be served. [1949 c 79 § 3; Rem. Supp. 1949 § 3991–8.]

Publication of notice in eminent domain proceedings: RCW 4.28.120.

8.08.040 Hearing—Order adjudicating public use. At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises or other property described in said petition have been duly served with said notice as prescribed herein, and shall be further satisfied by competent proof that the contemplated use for which the lands, real estate, premises, or other property sought to be appropriated is a public use of the county, the court or judge thereof may make and enter an order adjudicating that the contemplated use is really a public use of the county, and which order shall be final unless review thereof to the supreme court or the court of appeals be taken within five days after entry of such order, adjudicating that the contemplated use for which the lands, real estate, premises or other property sought to be appropriated is really a public use of the county, and directing that determination be had of the compensation and damages to be paid all parties interested in the land, real estate, premises, or other property sought to be appropriated for the taking and appropriation thereof, together with the injury, if any, caused by such taking or appropriation to the remainder of the lands, real estate, premises, or other property from which the same is to be taken and appropriated, after offsetting against any and all such compensation and damages, special benefits, if any, accruing to such remainder by reason of such appropriation and use by the county of such lands, real estate, premises, and other property described in the petition; such determination to be made by a jury, unless waived, in which event the compensation or damages shall be determined by the court without a jury. [1971 c 81 § 37; 1949 c 79 § 4; Rem. Supp. 1949 § 3991–9.]

8.08.050 Trial—Damages to be found. The jury selected to hear the evidence and determine the compensation to be paid to the owner or owners of such real estate or property to be appropriated for public use, shall be selected, impaneled and sworn in the same manner that juries in other civil actions are selected, impaneled and sworn, and in case a jury is waived, such compensation or damages shall be ascertained and determined by the court or judge thereof and the proceedings shall be the same as in trial of an issue of fact by the court. Upon the close of the evidence, the court shall instruct the jury as to the matters submitted to them and the law pertaining thereto. Whereupon the jury shall retire and deliberate and determine upon the amount of the compensation of damages and money that shall be paid to the owner or owners of the real estate or property sought to be appropriated, which shall be the amount found by

the jury to be the fair and full value of such premises, and when the jury shall have determined upon their verdict, they shall return the same to the court as in other civil actions. [1949 c 79 § 5; Rem. Supp. 1949 § 3991–10.]

Rules of court: CR 47, 48.

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Verdicts, civil actions: Chapter 4.44 RCW.

8.08.060 Judgment—Decree of appropriation. Upon the verdict of the jury or upon the determination of the court of the compensation or damages to be paid for the real estate or property appropriated, judgment shall be entered against such county in favor of the owner or owners of the real estate or property so appropriated for the amount found as just compensation therefor, and upon the payment of such amount by such county to the clerk of such court for the use of the owner or owners or the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate or property sought to be taken, thereby vesting the title to the same in such county; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated and shall be recorded by such auditor like a deed of real estate and with like effect. The money so paid to the clerk of the court shall be by him paid to the person or persons entitled thereto upon the order of the court. [1949 c 79 § 6; Rem. Supp. 1949 § 3991–11.]

8.08.070 Costs. All the costs of such proceedings in the superior court shall be paid by the county initiating such proceedings. [1949 c 79 § 7; Rem. Supp. 1949 § 3991–12.]

8.08.080 Appeal. Either party may appeal from the judgment for compensation of the damages awarded in the superior court to the supreme court or the court of appeals within thirty days after the entry of judgment as aforesaid, and such appeal shall bring before the supreme court or the court of appeals the propriety and justice of the amount of damage in respect to the parties to the appeal: *Provided*, That upon such appeal no bonds shall be required: *And provided further*, That if the owner of land, real estate, or premises accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the supreme court or the court of appeals, and final judgment by default may be rendered in the superior court as in other cases. [1971 c 81 § 38; 1949 c 79 § 8; Rem. Supp. 1949 § 3991–13.]

8.08.090 Appropriation authorized in aid of federal or state improvement. Every county in this state is hereby, for the purposes of RCW 8.08.090 through 8.08.130, declared to be a body corporate and is authorized and empowered by and through its board of county commissioners whenever said board shall judge it to be clearly for the general welfare and benefit of the people

of the county, and so far as shall be in harmony with the Constitution of this state and the provisions of RCW 8.08.090 through 8.08.130, to condemn and appropriate as hereinafter in RCW 8.08.090 through 8.08.130 provided and to dispose of for public use such lands, properties, rights and interests as are hereinafter in RCW 8.08.090 through 8.08.130 mentioned, whenever the government of the United States or of this state is intending or proposing the construction, operation or maintenance of any public work situated or to be situated wholly or partly within such county, or the expenditure of money or labor for the construction, operation or maintenance of any such work, and such condemnation or appropriation will enable the county to aid, promote, facilitate or prepare for any such construction, operation, maintenance or expenditure by either or both such governments, or to fulfill or dispose of any condition upon which such construction, operation, maintenance or expenditure is by law or from any cause contingent, and no property shall be exempt from such condemnation, appropriation or disposition by reason of the same having been or being dedicated, appropriated or otherwise reduced or held to public use. [1895 c 2 § 1; RRS § 901.]

8.08.100 Mode of appropriation. The right of eminent domain for the purposes intended in RCW 8.08.090 through 8.08.130 is hereby extended to all counties in this state and every such county for any purpose of condemnation, appropriation or disposition such as is mentioned in RCW 8.08.090 is hereby authorized and empowered to condemn and appropriate all necessary lands and all rights, properties and interests in or appurtenant to land under the same procedure as is or shall be provided by the laws of this state for the case of any similar condemnation or appropriation by other corporations. [1895 c 2 § 3; RRS § 903.]

8.08.110 Tax levy to pay costs. The board of county commissioners is hereby authorized and empowered in aid of the powers granted or prescribed in RCW 8.08.090 to levy, annually, a tax as large as may be necessary, but not exceeding the rate of one mill on the dollar, upon all the taxable property in the county, such tax to be assessed, levied and collected at the same time and in the same manner as taxes for general county purposes, but the proceeds of said taxes, when collected, shall constitute and be a special fund, applicable solely to the cost of such condemnation, appropriation or disposition, as is mentioned in RCW 8.08.090, and the expenses incident thereto. [1895 c 2 § 2; RRS § 902.]

8.08.120 Indebtedness is for general county purposes. Any county purpose mentioned in RCW 8.08.090 through 8.08.130 shall be deemed and held to be a general county purpose and any indebtedness contracted or to be contracted therefor shall be deemed and held to be an indebtedness for general county purposes, and all the provisions of law of this state relative to indebtedness for general county purposes or the contracting of such indebtedness or the bonds for funding the same shall be

deemed applicable to any indebtedness contracted or to be contracted or any bonds issued by any county under RCW 8.08.090 through 8.08.130, but the accounts of the county with respect to the receipts and disbursements of all moneys received or disbursed by the county under the provisions of RCW 8.08.090 through 8.08.130 shall, for each condemnation, appropriation and disposition, be so kept as to clearly and fully exhibit such accounts separate and apart from the other accounts of the county. [1895 c 2 § 4; RRS § 904.]

Public contracts and indebtedness: Title 39 RCW.

8.08.130 Limitation. Any condemnation, appropriation or disposition intended in RCW 8.08.090 through 8.08.130 shall be deemed and held to be for a county purpose and public use within the meaning of RCW 8.08.090 through 8.08.130 when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof, or when it is otherwise within the meaning of the phrase "for a county purpose" as occurring in the Constitution of this state. [1895 c 2 § 5; RRS § 905.]

8.08.140 Condemnation for military purposes. See RCW 8.04.170.

8.08.141 Condemnation for military purposes—Construction. See RCW 8.04.180.

8.08.150 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.12

EMINENT DOMAIN BY CITIES

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Waterworks, authority to acquire and operate: RCW 35.92.010.

CONDEMNATION

8.12.010 "City" defined. The term "city," when used in this chapter, means and includes every city and town and each unclassified city and town in the state of Washington. [1915 c 154 § 20; RRS § 9272.]

Severability—1915 c 154: "An adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof." [1915 c 154 § 19; RRS § 9271.] This applies to RCW 8.12.010 through 8.12.560.

8.12.020 Other terms defined. Whenever the word "person" is used in this chapter, the same shall be construed to include any company, corporation or association, the state or any county therein, and the words "city" or "town" wherever used, shall be construed to be either. Whenever the words "installment" or "installments" are used in this chapter, they shall be construed to include installment or installments of interest, as provided in RCW 8.12.420. [1925 ex.s. c 115 § 4; 1907 c 153 § 52; RRS § 9277. Prior: 1905 c 55 § 51; 1893 c 84 § 51.]

8.12.030 Condemnation authorized—Purposes enumerated. Every city and town and each unclassified city and town within the state of Washington, is hereby authorized and empowered to condemn land and property, including state, county and school lands and property for streets, avenues, alleys, highways, bridges, approaches, culverts, drains, ditches, public squares, public markets, city and town halls, jails and other public buildings, and for the opening and widening, widening and extending, altering and straightening of any street, avenue, alley or highway, and to damage any land or other property for any such purpose or for the purpose of making changes in the grade of any street, avenue, alley or highway, or for the construction of slopes or retaining walls for cuts and fills upon real property abutting on any street, avenue, alley or highway now ordered to be, or such as shall hereafter be ordered to be opened, extended, altered, straightened or graded, or for the purpose of draining swamps, marshes, tidelands, tide flats or ponds, or filling the same, within the limits of

such city, and to condemn land or property, or to damage the same, either within or without the limits of such city for public parks, drives and boulevards, hospitals, pesthouses, drains and sewers, garbage crematories and destructors and dumping grounds for the destruction, deposit or burial of dead animals, manure, dung, rubbish, and other offal, and for aqueducts, reservoirs, pumping stations and other structures for conveying into and through such city a supply of fresh water, and for the purpose of protecting such supply of fresh water from pollution, and to condemn land and other property and damage the same for such and for any other public use after just compensation having been first made or paid into court for the owner in the manner prescribed by this chapter. [1915 c 154 § 1; 1907 c 153 § 1; RRS § 9215. Prior: 1905 c 55 § 1; 1893 c 84 § 1.]

8.12.040 Ordinance to specify method of payment—Limitations. When the corporate authorities of any such city shall desire to condemn land or other property, or damage the same, for any purpose authorized by this chapter, such city shall provide therefor by ordinance, and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, compensation therefor shall be made from any general funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon property benefited, the proceedings for the making of such special assessment shall be as hereinafter prescribed, in this chapter: *Provided*, That no special assessment shall be levied under authority of this chapter except when made for the purpose of streets, avenues, alleys, or highways or alterations thereof or changes of the grade therein or other improvements in or adjoining the same, or for bridges, approaches, culverts, sewers, drains, ditches, public squares, public playgrounds, public parks, drives or boulevards or for the purpose of draining swamps, marshes, tide flats, tidelands or ponds or for filling the same: *And It Is Further Provided*, That when a street, avenue, highway or boulevard is established or widened to a width greater than one hundred and fifty feet the excess over and above the one hundred and fifty feet shall be paid out of the general fund of such city without any deduction for benefits of such excess. [1925 ex.s. c 128 § 2; 1907 c 153 § 2; RRS § 9216. Prior: 1905 c 55 § 2; 1893 c 84 § 2.]

8.12.050 Petition for condemnation. Whenever any such ordinance shall be passed by the legislative authority of any such city for the making of any improvement authorized by this chapter or any other improvement that such city is authorized to make, the making of which will require that property be taken or damaged for public use, such city shall file a petition in the superior court of the county in which such land is situated, in the name of the city, praying that just compensation, to be made for the property to be taken or damaged for the improvement or purpose specified in such ordinance, be ascertained by a jury or by the court in case a jury be

waived. [1913 c 11 § 1; 1907 c 153 § 3; RRS § 9217. Prior: 1905 c 55 § 3; 1893 c 84 § 3.]

8.12.060 Contents of petition. Such petition shall contain a copy of said ordinance, certified by the clerk under the corporate seal, a reasonably accurate description of the lots, parcels of land and property which will be taken or damaged, and the names of the owners and occupants thereof and of persons having any interest therein, so far as known, to the officer filing the petition or appearing from the records in the office of the county auditor. [1907 c 153 § 4; RRS § 9218. Prior: 1905 c 55 § 4; 1893 c 84 § 4.]

8.12.070 Summons—Service. Upon the filing of the petition aforesaid a summons, returnable as summons in other civil actions, shall be issued and served upon the persons made parties defendant, together with a copy of the petition, as in other civil actions. And in case any of them are unknown or reside out of the state, a summons for publication shall issue and publication be made and return and proof thereof be made in the same manner as is or shall be provided by the laws of the state for service upon absent defendants in other civil actions. Notice so given by publication shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names and had been personally served. [1907 c 153 § 5; RRS § 9219. Prior: 1905 c 55 § 5; 1893 c 84 § 5.]

Commencement of actions: Chapter 4.28 RCW.

Publication of

legal notices: Chapter 65.16 RCW.

notice in eminent domain proceedings: RCW 4.28.120.

8.12.080 Service when state or county lands are involved. In case the land, real estate, premises or other property sought to be appropriated or damaged is state, school or county land, the summons and copy of petition shall be served on the auditor of the county in which such land, real estate, premises or other property is situated. Service upon other parties defendant shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions. [1907 c 153 § 6; RRS § 9220. Prior: 1905 c 55 § 6; 1893 c 84 § 6.]

Service of process where state land is involved: RCW 8.28.010.

8.12.090 Waiver of jury—Adjudication of public use—Procedure. In any proceedings under this chapter wherein a trial by jury is provided for, the jury may be waived as in other civil cases in courts of record in the manner prescribed by law, and the matter may be heard and determined without the intervention of a jury. Whenever an attempt is made to take private property, for a use alleged to be public under authority of this chapter, the question whether the contemplated use be really public shall be a judicial question and shall be determined as such by the court before inquiry is had into the question of compensation to be made. When a jury is required for the determination of any matter under this chapter, such jury may be the same jury summoned for the trial of ordinary civil actions before the court, or the

court may, in its discretion, issue a venire to the sheriff to summon as jurors such number of qualified persons as the court shall deem sufficient. Except as herein otherwise provided, the practice and procedure under this chapter in the superior court and in relation to the taking of appeals and prosecution thereof, shall be the same as in other civil actions, but all appeals must be taken within thirty days from the date of rendition of the judgment appealed from. Proceedings under this chapter shall have precedence of all cases in court except criminal cases. [1907 c 153 § 51; RRS § 9276. Prior: 1905 c 55 § 50; 1893 c 84 § 50. Formerly RCW 8.12.090, 8.12.110 and 8.12.200, part.]

Juries, civil actions: Chapters 2.36, 4.44 RCW.

8.12.100 Trial—Jury—Right to separate juries. Upon the return of said summons, or as soon thereafter as the business of court will permit, the said court shall proceed to the hearing of such petition and shall impanel a jury to ascertain the just compensation to be paid for the property taken or damaged, but if any defendant or party in interest shall demand, and the court shall deem it proper, separate juries may be impaneled as to the compensation or damages to be paid to any one or more of such defendants or parties in interest. [1907 c 153 § 7; RRS § 9221. Prior: 1905 c 55 § 7; 1893 c 84 § 7.]

8.12.120 Interested party may be brought in. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land or other property is mentioned or described in such petition: *Provided*, Such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his interest in and description of the lot, parcel of land or other property in respect to which he claims compensation. [1907 c 153 § 8; RRS § 9222. Prior: 1905 c 55 § 8; 1893 c 84 § 8.]

Rules of court: CR 17 through 25.

8.12.130 Jury may view premises. The court may upon the motion of such city or of any defendant direct that said jury (under the charge of any officer of the court and accompanied by such person or persons as may be appointed by the court to point out the property sought to be taken or damaged) shall view the lands and property affected by said improvement. [1907 c 153 § 9; RRS § 9223. Prior: 1905 c 55 § 9; 1893 c 84 § 9.]

View of premises by jury: RCW 4.44.270.

8.12.140 Damage to buildings—Measure. If there be any building standing, in whole or in part, upon any land to be taken, the jury shall add to their finding of the value of the land taken the damages to said building. If the entire building is taken, or if the building is damaged, so that it cannot be readjusted to the premises, then the measure of damages shall be the fair market

value of the building. If part of the building is taken or damaged and the building can be readjusted or replaced on the part of the land remaining, then the measure of damages shall be the cost of readjusting or moving the building, or the part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [1907 c 153 § 10; RRS § 9224. Prior: 1905 c 55 § 10; 1893 c 84 § 10.]

8.12.150 Separate findings where there are several interests—Interpleader of adverse claimants. If the land and buildings belong to different parties, or if the title to the property be divided into different interests by lease or otherwise, the damages done to each of such interests may be separately found by the jury on the request of any party. In making such findings, the jury shall first find and set forth in their verdict the total amount of the damage to said land and buildings and all premises therein, estimating the same as an entire estate and as if the same were the sole property of one owner in fee simple; and they shall then apportion the damages so found among the several parties entitled to the same, in proportion to their several interests and claims and the damages sustained by them respectively, and set forth such apportionment in their verdict. No delay in ascertaining the amount of compensation shall be occasioned by any doubt or contest which may arise as to the ownership of the property, or any part thereof, or as to the extent of the interest of any defendant in the property to be taken or damaged, but in such case, the jury shall ascertain the entire compensation or damage that should be paid for the property and the entire interests of all the parties therein, and the court may thereafter require adverse claimants to interplead, so as to fully determine their rights and interests in the compensation so ascertained. And the court may make such order as may be necessary in regard to the deposit or payment of such compensation. [1907 c 153 § 11; RRS § 9225.]

Rules of court: CR 54.

8.12.160 Verdict—New trial—Continuance—New summons. Upon the return of the verdict the proceedings of the court regarding new trial and the entry of judgment thereon shall be the same as in other civil actions, and the judgment shall be such as the nature of the case shall require. The court shall continue or adjourn the case from time to time as to all occupants and owners named in such petition who shall not have been served with process or brought in by publication, and new summons may issue or new publication may be made at any time; and upon such occupants or owners being brought in, the court may impanel a jury to ascertain the compensation so to be made to such defendant or defendants for private property taken or damaged, and like proceedings shall be had for such purpose as herein provided. [1907 c 153 § 12; RRS § 9226. Prior: 1905 c 55 § 11; 1893 c 84 § 11.]

Rules of court: CR 17 through 25, 54, 59.

Entry of judgment, civil actions: Chapter 4.64 RCW.

New trials, civil actions: Chapter 4.76 RCW.

8.12.170 Change of ownership—Powers of court. The court shall have power at any time, upon proof that any such owner or owners named in such petition who has not been served with process has ceased to be such owner or owners since the filing of such petition, to impanel a jury and ascertain the just compensation to be made for the property (or the damage thereto) which has been owned by the person or persons so ceasing to own the same, and the court may upon any finding or findings of any jury or juries, or at any time during the course of such proceedings enter such order, rule, judgment or decree as the nature of the case may require. [1907 c 153 § 13; RRS § 9227. Prior: 1905 c 55 § 12; 1893 c 84 § 12.]

8.12.190 Findings. When the ordinance providing for any such improvement provides that compensation therefor shall be paid in whole or in part by special assessment upon property benefited, the jury or court, as the case may be, shall find separately:

- (1) The value of land taken at date of trial;
- (2) The damages which will accrue to the part remaining because of its severance from the part taken, over and above any local or special benefits arising from the proposed improvement. No lot, block, tract or parcel of land found by the court or jury to be so damaged shall be assessed for any benefits arising from such taking only;
- (3) The gross damages to any land or property not taken (other than damages to a remainder, by reason of its severance from the part taken), and in computing such gross damages shall not deduct any benefits from the proposed improvement. Such finding by the court or jury shall leave any lot, block, parcel or tract of land, or other property subject to assessment for its proportion of any and all local and special benefits accruing thereto by reason of said improvement.

When such ordinance does not provide for any assessment in whole or in part on property specially benefited, the compensation found for land or property taken or damaged shall be ascertained over and above any local or special benefits from the proposed improvement.

Such city or town may offset against any award of the jury or court for the taking or damaging of any lot, block, tract or parcel of land or other property, any general taxes or local assessments unpaid at the time such award is made. Such offset shall be made by deducting the amount of such unpaid taxes and assessments at the time of payment of the judgment or issuance of a warrant in payment of such judgment. [1909 c 210 § 1; 1907 c 153 § 15; RRS § 9229. Prior: 1905 c 55 § 15; 1893 c 84 § 15.]

8.12.200 Judgment—Appeal—Payment of award into court. Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings

and all costs which shall be taxed as in other civil cases, provided that in case any defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement unless appealed from, and no appeal from the same shall delay proceedings under said ordinance, if such city shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such city, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation which may at any time be finally awarded to such parties so appealing in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor, and abide any rule or order of the court in relation to the matter in controversy. In case of an appeal to the supreme court or the court of appeals of the state by any party to the proceedings the money so paid into the superior court by such city, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he shall be deemed thereby to have waived conclusively an appeal to the supreme court or the court of appeals and final judgment may be rendered in the superior court as in other cases. [1971 c 81 § 39; 1907 c 153 § 16; 1905 c 55 § 16; 1893 c 84 § 16; RRS § 9230. FORMER PART OF SECTION: 1907 c 153 § 51, part; RRS § 9276, part, now codified in RCW 8.12-.090. Prior: 1905 c 55 § 50; 1893 c 84 § 50, part.]

8.12.210 Title vests upon payment. The court, upon proof that just compensation so found by the jury, or by the court in case the jury is waived, together with costs, has been paid to the person entitled thereto, or has been paid into court as directed by the court, shall enter an order that the city or town shall have the right at any time thereafter to take possession of or damage the property in respect to which such compensation shall have been so paid or paid into court as aforesaid, and thereupon, the title to any property so taken shall be vested in fee simple in such city or town. [1907 c 153 § 17; RRS § 9231. Prior: 1905 c 55 § 17; 1893 c 84 § 17.]

Rules of court: CR 58.

PAYMENT FOR IMPROVEMENT

8.12.220 Payment from general fund. When the ordinance under which said improvement is ordered to be made shall not provide that such improvement shall be made wholly by special assessment upon property benefited, the whole amount of such damage and costs, or such part thereof as shall not be assessed upon property benefited shall be paid from the general fund of such city or town, and if sufficient funds therefor are not already provided, such city or town shall levy and collect a sufficient sum therefor as part of the general taxes of such city or town, or may contract indebtedness by the issuance of bonds or warrants therefor as in other cases

of internal improvements. [1907 c 153 § 18; RRS § 9232. Prior: 1905 c 55 § 18; 1893 c 84 § 18.]

8.12.230 Payment by special assessment. When such ordinance under which said improvement shall be ordered, shall provide that such improvement shall be paid for, in whole or in part, by special assessment of property benefited thereby, the damages and costs awarded, or such part thereof as is to be paid by special assessment, shall be levied, assessed and collected in the manner hereinafter provided. [1907 c 153 § 19; RRS § 9233. Prior: 1905 c 55 § 19; 1893 c 84 § 19.]

8.12.240 Petition for assessment—Appointment of commissioners. Such city may file in the same proceeding a supplementary petition, praying the court that an assessment be made for the purpose of raising an amount necessary to pay the compensation and damages which may [be] or shall have been awarded for the property taken or damaged, with costs of the proceedings, or for such part thereof as the ordinance shall provide. The said court shall thereupon appoint three competent persons as commissioners to make such assessment, or if there be a board of eminent domain commissioners of such city, appointed under the provisions of this chapter, said proceeding for assessment shall be referred to said board. Said commissioners shall include in such assessment the compensation and damages which may [be] or shall have been awarded for the property taken or damaged, with all costs and expenses of the proceedings incurred to the time of their appointment, or to the time when said proceeding was referred to them, together with the probable further costs and expenses of the proceedings, including therein the estimated costs of making and collecting such assessment. [1907 c 153 § 20; RRS § 9234. Prior: 1905 c 55 § 20; 1893 c 84 § 20.]

8.12.250 Advancement from general funds against assessments. If any city or town shall desire to take possession of any property or do any damage or proceed with any improvement, the compensation for which is to be paid for in whole or in part by the proceeds of special assessment under this chapter, it may advance from its general funds, or any moneys available for the purpose, the amount of the assessments aforesaid, and pay the same to the owner or into court, as herein provided, reimbursing itself for moneys so advanced from the special assessments aforesaid. If there be no funds available for the purpose, such city may contract indebtedness for the purpose of raising funds therefor, which indebtedness shall be contracted and such proceedings taken therefor as is provided by law for indebtedness contracted for other internal improvements. [1907 c 153 § 50; RRS § 9275. Prior: 1905 c 55 § 49; 1893 c 84 § 49.]

Contracting indebtedness by city: Titles 35, 39 RCW.

ASSESSMENTS—IMMEDIATE PAYMENT

8.12.260 Appointment of board of eminent domain commissioners—Terms of office. At any time after

June 11, 1907, any such city may petition the superior court of the county in which said city is situated, that a board of eminent domain commissioners be appointed to make assessments in all condemnation proceedings instituted by such city. Said superior court shall thereupon, by order duly entered in its records, appoint three competent persons as commissioners who shall be known as and who shall constitute the "board of eminent domain commissioners of the city of ----," and who shall thereafter make assessments in all condemnation proceedings instituted by such city. The order of the court shall provide that one of the members of such board shall serve for one year, one for two years and one for three years, from the date of their appointment and until their successors are appointed and qualified. Annually thereafter, said superior court shall appoint one such person as such commissioner, whose term shall begin on the same day of the month on which the first order of appointment was made and continue for three years thereafter and until his successor is appointed and qualified. If any commissioner shall be disqualified in any proceeding by reason of interest, or for any other reason, said superior court shall appoint some other competent person to act in his place in such proceeding. [1907 c 153 § 21; RRS § 9235. Prior: 1905 c 55 § 21; 1893 c 84 § 21.]

8.12.270 Oath of commissioners—Compensation. All commissioners, before entering upon their duties shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to law. Every commissioner shall receive compensation at the rate of ten dollars per day for each day actually spent in making the assessment herein provided for: *Provided*, That in any city of the first class the superior court of the county in which said city is situated may, by order duly entered in its record, fix the compensation of each commissioner in an amount in no case to exceed twenty-five dollars per day for each day actually spent in making the assessment herein provided for. Each commissioner shall file in the proceeding in which he has made such assessment his account, stating the number of days he has actually spent in said proceeding, and upon the approval of said account by the judge before whom the proceeding is pending, the comptroller or city clerk of such city shall issue a warrant in the amount approved by the judge upon the special fund created to pay the awards and costs of said proceeding, and the fees of such commissioner so paid shall be included in the cost and expense of such proceedings. In case such commissioners are, during the same period, or parts thereof, engaged in making assessments in different proceedings, in rendering their accounts they shall apportion them to the different proceedings in proportion to the amount of time, actually spent by them on the assessment in each proceeding. [1947 c 139 § 1; 1929 c 87 § 1; 1915 c 154 § 2; 1907 c 153 § 22; Rem. Supp. 1947 § 9236. Prior: 1905 c 55 § 22, part; 1893 c 84 § 22, part.]

8.12.280 Duties of commissioners—Assessment of benefits—Apportionment. It shall be the duty of such commissioners to examine the locality where the improvement is proposed to be made and the property which will be especially benefited thereby, and to estimate what proportion, if any, of the total cost of such improvement will be a benefit to the public, and what proportion thereof will be a benefit to the property to be benefited, and apportion the same between the city and such property so that each shall bear its relative equitable proportion, and having found said amounts, to apportion and assess the amount so found to be a benefit to the property upon the several lots, blocks, tracts and parcels of land, or other property in the proportion in which they will be severally benefited by such improvement: *Provided*, That the legislative body of the city may in the ordinance initiating any such improvement establish an assessment district and said district when so established shall be deemed to include all the lands or other property especially benefited by the proposed improvement, and the limits of said district when so fixed shall be binding and conclusive on the said commissioners: *And provided further*, That no property shall be assessed a greater amount than it will be actually benefited. That all leasehold rights and interests of private persons, firms or corporations in or to harbor areas located within the corporate limits of any incorporated city or town are for the purpose of assessment for the payment of the awards, interest and costs of any improvement authorized by this chapter, declared to be real property, and all such leasehold rights and interests may be assessed and reassessed in accordance with the special benefits received for the purpose of paying the cost of any such improvement heretofore made or which may hereafter be made in accordance with law. [1915 c 154 § 3; 1909 c 211 § 1; 1907 c 153 § 23; RRS § 9237. Prior: 1905 c 55 § 22, part; 1893 c 84 § 22, part.]

8.12.290 Assessment roll. Such commissioners in each proceeding shall also make or cause to be made an assessment roll in which shall appear the names of the owners, so far as known, the description of each lot, block, tract or parcel of land or other property and the amounts assessed as special benefits thereto, and in which they shall set down as against the city the amount they shall have found as public benefit, if any, and certify such assessment roll to the court before which said proceeding is pending, within sixty days after their appointment or after the date of the order referring said proceeding to them, or within such extension of said period as shall be allowed by the court. [1907 c 153 § 24; RRS § 9238. Prior: 1905 c 55 § 23; 1893 c 84 § 23.]

8.12.300 Hearing on assessment roll—Notice. After the return of such assessment roll, the court shall make an order setting a time for the hearing thereof before the court, which day shall be at least twenty days after return of the roll. It shall be the duty of the commissioners to give notice of the assessment and of the day fixed by the court for the hearing thereof in the following manner:

(1) They shall at least twenty days prior to the date fixed for the hearing on the roll, mail to each owner of the property assessed, whose name and address is known to them, a notice substantially in the following form:

"Title of Cause. To -----: Pursuant to an order of the superior court of the State of Washington, in and for the county of -----, there will be a hearing in the above entitled cause on ----- at ----- upon the assessment roll prepared by the commissioners heretofore appointed by said court to assess the property specially benefited by the (here describe nature of improvement); and you are hereby required if you desire to make any objections to the assessment roll, to file your objections to the same before the date herein fixed for the hearing upon the roll, a description of your property and the amount assessed against it for the aforesaid improvement is as follows: (Description of property and amount assessed against it.)

 Commissioners."

(2) They shall cause at least twenty days' notice to be given by posting notice of the hearing on the assessment roll in at least three public places in the city, one of which shall be in the neighborhood of the proposed improvement, and by publishing the same at least for two successive weeks in the official newspaper of the city. The notice so required to be posted and published, may be substantially as follows:

"Title of Cause. Special assessment notice. Notice is hereby given to all persons interested, that an assessment roll has been filed in the above entitled cause providing for the assessment upon the property benefited of the cost of (here insert brief description of improvement) and that the roll has been set down for hearing on the ----- day of ----- at ----- The boundaries of the assessment district are substantially as follows: (here insert an approximate description of the assessment district). All persons desiring to object to the assessment roll are required to file their objections before the date fixed for the hearing upon the roll, and appear on the day fixed for hearing before said court.

 Commissioners."

[1985 c 469 § 3; 1907 c 153 § 25; RRS § 9239. Prior: 1905 c 55 § 24; 1893 c 84 § 24.]

8.12.310 Proof of service. On or before the final hearing, the affidavit of one or more of the commissioners shall be filed in said court, stating that they have sent, or caused to be sent, by mail, to the owners whose property has been assessed and whose names and addresses are known to them, the notice hereinbefore required to be sent by mail to the owners of the property assessed. They shall also cause to be filed the affidavit of the person who shall have posted the notice required by

this chapter to be posted, setting forth when and in what manner the same was posted. Such affidavits shall be received as prima facie evidence of a compliance with this chapter in regard to giving such notices. They shall also file an affidavit of publication of such notice in like manner as is required in other cases of affidavits of publication of notice of [or] summons. [1907 c 153 § 26; RRS § 9240. Prior: 1905 c 55 § 25; 1893 c 84 § 25.]

8.12.320 Continuance of hearing. If twenty days shall not have elapsed between the first publication or the posting of such notices and the day set for hearing, the hearing shall be continued until such time as the court shall order. The court shall retain full jurisdiction of the matter, until final judgment on the assessments; and if the notice given shall prove invalid or insufficient the court shall order new notice to be given. [1907 c 153 § 27; RRS § 9241. Prior: 1905 c 55 § 26; 1893 c 84 § 26.]

8.12.330 Objections to assessment roll. Any person interested in any property assessed may without payment of any fee to the clerk of court file objections to such report at any time before the day set for hearing said roll. As to all property to the assessment of which objections are not filed as herein provided, default may be entered and the assessment confirmed by the court. On the hearing, the report of such commissioners shall be competent evidence and either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law, tried by the court without a jury, and if it shall appear that the property of the objector is assessed more or less than it will be benefited or more or less than its proportionate share of the costs of the improvement, the court shall so find and also find the amount in which said property ought to be assessed, and the judgment shall be entered accordingly. [1947 c 139 § 2; 1907 c 153 § 28; Rem. Supp. 1947 § 9242. Prior: 1905 c 55 §§ 27, 28; 1893 c 84 §§ 27, 28.]

8.12.340 Modification of assessment. The court before which any such proceedings may be pending shall have authority at any time before final judgment to modify, alter, change, annul or confirm any assessment returned as aforesaid, or cause any such assessment to be recast by the same commissioners, whenever it shall be necessary for the obtainment of justice, or may appoint other commissioners in the place of all or any of the commissioners first appointed for the purpose of making such assessment or modifying, altering, changing or recasting the same, and may take all such proceedings and make all such orders as may be necessary to make a true and just assessment of the cost of such improvement according to the principles of this chapter, and may from time to time, as may be necessary, continue the application for that purpose as to the whole or any part of the premises. [1907 c 153 § 29; RRS § 9243. Prior: 1905 c 55 § 29; 1893 c 84 § 29.]

8.12.350 Judgment, effect—Lien. The judgment of the court shall have the effect of a separate judgment as to each tract or parcel of land or other property assessed, and any appeal from such judgment shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. Such judgment shall be a lien upon the property assessed from the date thereof until payment shall be made, and said lien shall be paramount and superior to any other lien or encumbrance whatsoever, theretofore or thereafter created, except a lien for assessments for general taxes. [1915 c 154 § 4; 1907 c 153 § 30; RRS § 9244. Prior: 1905 c 55 § 30; 1893 c 84 § 30.]

8.12.360 Certification of roll to treasurer. The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll and judgment to the treasurer of the city, or if there has been an appeal taken from any part of such judgment, then he shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is rendered: *Provided*, That if upon such appeal, the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment roll shall describe the lots, blocks, tracts, parcels of land or other property assessed, and the respective amounts assessed on each, and shall be sufficient warrant to the city treasurer to collect the assessment therein specified. In no case, however, shall a copy of such assessment roll and judgment be certified to the city treasurer unless and until the awards of the jury shall have first been accepted by the city council or other legislative body as provided by law, or the time for rejecting the same shall have expired. [1915 c 154 § 5; 1907 c 153 § 31; RRS § 9245. Prior: 1905 c 55 § 31; 1893 c 84 § 31.]

8.12.370 Treasurer's notice to pay when assessments immediately payable. Whenever the assessment for any such improvement shall be immediately payable, the owner of any such lot, tract or parcel of land or other property so assessed may pay such entire assessment, or any part thereof, without interest, within thirty days after the notice of such assessment.

The city treasurer shall, as soon as the certified copy of the assessment roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for two consecutive daily, or two consecutive weekly issues, and then by posting four notices thereof in public places along the line of the proposed improvement, that the said roll is in his hands for collection, and that any assessment thereon, or any part thereof, may be paid within thirty days from the date of the first publication or posting of said notice, without penalty, interest or costs, and if not so paid, the same shall thereupon become delinquent. [1915 c 154 § 6; 1907 c 153 § 32; RRS § 9246. Prior: 1905 c 55 § 32; 1893 c 84 § 32.]

8.12.380 Notice by mail—Penalty for default. It shall be the duty of the city treasurer into whose hands such judgment and assessment roll shall come, to mail notices of such assessment to the persons whose names appear on the assessment roll, so far as the addresses of such persons are known to him. Any such treasurer omitting so to do, shall be liable to a penalty of five dollars for every such omission; but the validity of the special assessment shall not be affected by such omission. When any assessment or assessments are paid, it shall be the duty of the treasurer to write the word "paid" opposite the same together with the name and post office address of the person making the payment and the date of payment. The owner may annually notify the treasurer of his address and it shall be the duty of the treasurer to mail the notice above provided for to such address. [1907 c 153 § 33; RRS § 9247. Prior: 1905 c 55 § 33; 1893 c 84 § 33.]

BONDS—INSTALLMENT PAYMENT

8.12.390 Bonds authorized. The city council or other legislative body of any city may, in their discretion, provide by ordinance for the payment of the whole or any portion of the cost and expense of any local improvement authorized by law, by bonds of the improvement district, which bonds shall be issued and sold as herein provided. [1915 c 154 § 10; 1907 c 153 § 47; RRS § 9262.]

Cities and towns: Title 35 RCW.

Public contracts and indebtedness: Title 39 RCW.

8.12.400 Maturity—Interest—Payment. (1) Such bonds shall be issued only in pursuance of ordinances of the city directing the issuance of the same, and by their terms shall be made payable on or before a date not to exceed twelve years from and after their date, which latter date may be fixed by resolution or ordinance by council or other legislative body of said city and shall bear interest at such rate or rates as may be authorized by the council or other legislative body of said city, which interest shall be payable annually, or semiannually, as may be provided by resolution or ordinance: *Provided*, That the legislative body of any city of the first class having a population of three hundred thousand inhabitants, or more, issuing any bonds hereunder may by ordinance, passed by unanimous vote, authorize the issuance of such bonds payable on or before a date not to exceed twenty-two years from and after the date of the issue of such bonds, and shall in such ordinance provide that said bonds shall be sold at not less than par and shall bear interest at such rate or rates as may be authorized by the legislative body.

Such bonds shall be in such denominations as shall be provided in the resolution or ordinance authorizing their issuance and shall be numbered from one upwards, consecutively, and each bond and any coupon shall be signed by the mayor and attested by the clerk or comptroller of such city: *Provided, however*, That any coupons may in lieu of being so signed have printed thereon a facsimile of the signature of said officers and each bond

shall have the seal of such city affixed thereto and shall refer to the improvement to pay for which the same shall be issued and to the ordinance authorizing the same. Each bond shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement, and not otherwise. Such bonds shall not be issued in any amount in excess of the cost and expense of the improvement. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 12; 1970 ex.s. c 56 § 2; 1969 ex.s. c 232 § 64; 1925 ex.s. c 115 § 1; 1915 c 154 § 11; RRS § 9263.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

8.12.410 Sale—Application of proceeds. (1) The bonds issued under the provisions of this chapter or any portion thereof may be sold by any authorized officer or officers of the city at not less than their par value and accrued interest, and the proceeds thereof shall be applied in payment of the awards, interest and costs of the improvement.

(2) Notwithstanding subsection (1) of this section, such bonds may be sold in accordance with chapter 39.46 RCW. [1983 c 167 § 13; 1915 c 154 § 12; RRS § 9264.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

8.12.420 Installment payment of assessments. In all cases where any city shall issue bonds as provided for in this chapter, the whole or any portion of the separate assessments for any such improvement may be paid during the thirty day period provided for in RCW 8.12.430, and thereafter the sum remaining unpaid may be paid in equal annual installments; the number of which installments shall be less by two than the number of years which the bonds issued to pay for the improvements may run, with interest upon the whole unpaid sum at the bond rate, and each year thereafter one of such installments, together with the interest due thereon and on all installments thereafter to become due, shall be collected in the same manner as shall be provided by law and the resolutions and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued: *Provided, however*, That whenever the legislative body of any city of the first class having a population of three hundred thousand inhabitants, or more, shall have, as provided in RCW 8.12.400, by unanimous vote determined that any bonds issued hereunder shall be payable in twenty-two years, such legislative body may by ordinance provide that the principal sum remaining unpaid after the thirty day period specified in RCW 8.12.430 may be paid in ten equal annual

installments, beginning with the eleventh year and ending with the twentieth year after said thirty day period, together with interest upon the unpaid installments at the bond rate, and that in each year after the said thirty day period, to and including the tenth year thereafter, one installment of interest on the principal sum of said assessment shall be paid and collected, and that, beginning with the eleventh year after said thirty day period, one installment of the principal, together with the interest due thereon and on all installments thereafter to become due, shall be paid and collected in the same manner as shall be provided by law and the resolutions and ordinances of such city for the collection of assessments for such improvements in cases where no bonds are issued.

In all cases of improvements authorized in this chapter, where, at the time this chapter shall become effective, the notice by the city treasurer of the assessment for such improvement shall not have been published, the city council or other legislative body of such city may by ordinance or resolution provide for the issuance and sale of bonds for such improvement and for the payment of such assessments in installments. [1925 ex.s. c 115 § 2; 1915 c 154 § 13; RRS § 9265.]

8.12.430 Notice to pay—Due date of installments—Penalty—Interest. Whenever the assessment for any such improvement shall be payable in installments, the owner of any lot, tract, or parcel of land or other property charged with any such assessment may pay the assessment or any portion thereof, without interest, within thirty days after such notice of the assessment.

The city treasurer shall, as soon as the certified copy of the assessment roll has been placed in his hands for collection, publish a notice in the official newspaper of the city for two consecutive daily or two consecutive weekly issues, that the roll is in his hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time within thirty days from the date of the first publication of the notice without penalty, interest or costs, and the unpaid balance, if any, may be paid in equal annual installments, or any such assessment may be paid at any time after the first thirty days following the date of the first publication of the notice by paying the entire unpaid portion thereof with all penalties and costs attached, together with all interest thereon to the date of delinquency of the first installment thereof next falling due.

The notice shall further state that the first installment of the assessment shall become due and payable during the thirty day period succeeding a date one year after the date of first publication of the notice, and annually thereafter each succeeding installment shall become due and payable in like manner.

If the whole or any portion of any assessment remains unpaid after the first thirty day period herein provided for, interest upon the whole unpaid sum shall be charged at the bond rate, and each year thereafter one of the installments, together with interest due upon the whole of the unpaid balance, shall be collected, except that where

the assessment is payable in twenty years, installments of interest only shall be collected for the first ten years, as provided in RCW 8.12.420.

Any installment not paid prior to the expiration of the thirty day period during which the installment is due and payable, shall thereupon become delinquent. All delinquent installments shall be subject to a charge of five percent penalty levied upon both principal and interest due on the installments, and all delinquent installments, except installments of interest when the assessment is payable in twenty years, as provided in RCW 8.12.420, shall, until paid, be subject to a charge for interest at the bond rate.

The bonds herein provided for shall not be issued prior to twenty days after the expiration of the thirty days first above mentioned, but may be issued at any time thereafter. In all cases where any sum is paid as herein provided, the same shall be paid to the city treasurer, or to the officer whose duty it is to collect the assessments, and all sums so paid shall be applied solely to the payment of the awards, interest and costs of the improvements or the redemption of the bonds issued therefor. [1985 c 469 § 4; 1925 ex.s. c 115 § 3; 1915 c 154 § 14; RRS § 9266.]

8.12.440 Bond owner may enforce collection. If the city shall fail, neglect or refuse to pay said bonds or to promptly collect any such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall in addition to the principal of such bonds and interest thereon, recover five percent of such sum, together with the costs of such suit. Any number of owners of such bonds for any single improvement may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [1983 c 167 § 14; 1915 c 154 § 15; RRS § 9267.]

Rules of court: CR 17 through 25.

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

8.12.450 Bondholder's remedy limited to assessments. Neither the holder nor owner of any bond issued under the authority of this chapter shall have any claim therefor against the city by which the same is issued, except from the special assessment made for the improvement for which such bond was issued, but his remedy in case of nonpayment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each bond so issued. [1915 c 154 § 16; RRS § 9268.]

8.12.460 Payment of bonds—Call—Notice. The city treasurer shall pay the interest on the bonds authorized to be issued by this chapter out of the respective local improvement funds from which they are payable. Whenever there shall be sufficient money in any local improvement fund against which bonds have been issued under the provisions of this chapter, over and above sufficient for the payment of interest on all unpaid bonds,

to pay the principal of one or more bonds, the treasurer shall call in and pay such bonds. The bonds shall be called in and paid in their numerical order, commencing with number one. The call shall be made by publication in the city official newspaper in its first publication following the delinquency of the installment of the assessment or as soon thereafter as is practicable, and shall state that bonds No. _____ (giving the serial numbers of the bonds called) will be paid on the day the next interest payments on the bonds shall become due, and interest on the bonds shall cease upon such date. [1985 c 469 § 5; 1983 c 167 § 15; 1915 c 154 § 18; RRS § 9270.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

DELINQUENCY—REDEMPTION

8.12.470 Enforcement of collection—Interest on delinquency. Wherever any assessment or installment thereof shall become delinquent, the city treasurer shall enforce the collection thereof in the same manner as provided in chapter 9, Laws of 1933 [as codified in chapter 35.50 RCW], or such other laws as may be hereafter enacted for the foreclosure of delinquent local (physical) improvement assessments. All assessments or installments unpaid at the expiration of the time fixed herein for the payment of the same, shall bear interest at the rate of ten percent per annum, from said date until paid. [1947 c 152 § 1; 1915 c 154 § 7; 1907 c 153 § 34; Rem. Supp. 1947 § 9248. Prior: 1905 c 55 § 34; 1893 c 84 § 34.]

8.12.480 Assessment fund to be kept separate. All moneys collected by the treasurer upon assessments under this chapter shall be kept as a separate fund and shall be used for no other purpose than the redemption of warrants or bonds drawn or issued against the fund. [1907 c 153 § 42; RRS § 9257. Prior: 1905 c 55 § 42; 1893 c 84 § 42.]

8.12.490 Record of payment and redemption. Whenever before the sale of any property the amount of any assessment thereon, with interest and costs accrued thereon, shall be paid to the treasurer, he shall thereupon mark the same paid, with the date of payment thereof on the assessment roll, and whenever after sale of any property for any assessments, the same shall be redeemed, he shall thereupon enter the same redeemed with the date of such redemption on such record. Such entry shall be made on the margin of the record opposite the description of such property. [1907 c 153 § 43; RRS § 9258. Prior: 1905 c 55 § 43; 1893 c 84 § 43.]

8.12.500 Liability of treasurer. If the treasurer shall receive any moneys for assessments, giving a receipt therefor, for any property and afterwards return the same as unpaid, or shall receive the same after making such return, and the same be sold for assessment which has been so paid and receipted for by himself or his clerk or assistant, he and his bond shall be liable to the holder of the certificate given to the purchaser at the sale for

the amount of the face of the certificate, and a penalty of fifteen percent additional thereto besides legal interest, to be demanded within two years from the date of the sale and recovered in any court having jurisdiction of the amount, and the city shall in no case be liable to the holder of such certificate. [1907 c 153 § 44; RRS § 9259. Prior: 1905 c 55 § 44; 1893 c 84 § 44.]

MISCELLANEOUS PROVISIONS

8.12.510 Reassessment. If any assessment be annulled or set aside by any court, or be invalid for any cause, a new assessment may be made, and return and like notice given and proceedings had as herein required in relation to the first; and all parties in interest shall have the like rights, and the city council or other legislative body, and the superior court, shall perform the like duties and have like power in relation to any subsequent assessment as are hereby given in relation to the first assessment. [1907 c 153 § 45; RRS § 9260. Prior: 1905 c 55 § 45; 1893 c 84 § 45.]

8.12.520 Lien of assessment—Enforcement by civil action. All the assessments levied by any city under this chapter shall, from the date of the judgment confirming the assessment be a lien upon the real estate upon which the same may be imposed, and such lien shall continue until such assessments are paid; if any proceedings taken for the enforcement thereof, shall be held void or invalid, such city shall provide by ordinance for new proceedings and a new sale for the enforcement thereof in like manner as hereinbefore provided; and in addition to the remedy hereinbefore provided, any city may enforce such lien by civil action in any court of competent jurisdiction in like manner and with like effect as actions for the foreclosure of mortgage. [1907 c 153 § 46; RRS § 9261. Prior: 1905 c 55 § 46; 1893 c 84 § 46.]

Foreclosure actions, real estate mortgages: Chapter 61.12 RCW.

8.12.530 Discontinuance of proceedings. At any time within six months from the date of rendition of the last judgment awarding compensation for any such improvement in the superior court, or if any appeal be taken, then within two months after the final determination of the appeal in the supreme court or the court of appeals, any such city may discontinue the proceedings by ordinance passed for that purpose before making payment or proceeding with the improvement by paying or depositing in court all taxable costs incurred by any parties to the proceedings up to the time of such discontinuance. If any such improvement be discontinued, no new proceedings shall be undertaken therefor until the expiration of one year from the date of such discontinuance. [1971 c 81 § 40; 1915 c 154 § 21; 1907 c 153 § 49; RRS § 9274. Prior: 1905 c 55 § 48; 1893 c 84 § 48.]

8.12.540 Subsequent compensation for property taken or damaged. If any city has heretofore taken or shall hereafter take possession of any land or other property, or has damaged or shall hereafter damage the same for any of the public purposes mentioned in this

chapter, or for any other purpose within the authority of such city or town, without having made just compensation therefor, such city or town may cause such compensation to be ascertained and paid to the persons entitled thereto by proceedings taken in accordance with the provisions of this chapter, and the payment of such compensation and costs as shall be adjudged in favor of the persons entitled thereto in such proceedings shall be a defense to any other action for the taking or damaging of such property. [1907 c 153 § 53; RRS § 9278. Prior: 1905 c 55 § 52; 1893 c 84 § 52.]

8.12.550 Regrade assessments. If any street, avenue or alley, or the right to use and control the same for purposes of public travel, shall belong to any city and such city shall establish a grade therefor, which grade requires any cut or fill, damaging abutting property, the damages to arise from the making of such grade may be ascertained in the manner provided in this chapter, but such city may provide that the compensation to be made for such damage, together with the accruing costs, shall be added to the cost of the labor and material necessary for the grading thereof, and shall be paid by assessment upon the property within the local assessment district defined by law or the charter or ordinances of such city in the same manner and to the same extent as other expenses of such improvement are assessed and collected. In such cases it shall not be necessary to procure the appointment of commissioners to take the other proceedings herein provided for making such assessments, but all the proceedings for the assessment and collection of such damages and costs, shall, if so ordained by such city, be governed by the charter provisions, law or ordinances in force in such city for the assessment and collection of the costs of such improvements upon property locally benefited thereby: *Provided, however,* That this section shall not apply to the original grading of such street, avenue or alley. [1909 c 80 § 1; 1907 c 153 § 48; RRS § 9273. Prior: 1905 c 55 § 47; 1893 c 84 § 47.]

8.12.560 Construction as to second class cities. In so far as this chapter relates to cities of the second class, this chapter shall not be deemed to be exclusive or as repealing or superseding any existing law relative to such cities, covering any subject covered by this chapter, but as to such cities, this chapter shall be construed as conferring additional powers and additional remedies, to those now provided by law. [1907 c 153 § 56; RRS § 9279.]

Second class cities

additional powers, eminent domain: RCW 35.23.450.

specific powers enumerated, power of eminent domain: RCW 35.23.440(46).

8.12.570 Condemnation for military purposes. See RCW 8.04.170.

8.12.580 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.16

EMINENT DOMAIN BY SCHOOL DISTRICTS

Sections

8.16.010	Condemnation authorized for schoolhouse sites.
8.16.020	Petition—Contents.
8.16.030	Notice of petition—Service.
8.16.040	Adjournment of proceedings—Further notice.
8.16.050	Hearing—Finding of necessity—Setting for trial.
8.16.060	Impanelling of jury.
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8.16.080	Verdict.
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8.16.100	Waiver of jury.
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8.16.140	Appeal does not delay possession if award paid.
8.16.150	Designation of parties—Fees.
8.16.160	Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests.

Acreage limitation with respect to district's power of eminent domain: RCW 28A.58.070.

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

8.16.010 Condemnation authorized for schoolhouse sites. Whenever any school district shall select any real estate as a site for a schoolhouse, or as additional grounds to an existing schoolhouse site, within the district, and the board of school directors of such district and the owner or owners of the site or any part thereof, or addition thereto selected, shall be unable to agree upon the compensation to be paid by such school district to the owner or owners thereof, such school district shall have the right to take and acquire title to such real estate for use as a schoolhouse site or additional site, upon first paying to the owner or owners thereof therefor the value thereof, to be ascertained in the manner hereinafter provided. [1909 p 372 § 1; 1903 c 111 § 1; RRS § 906.]

8.16.020 Petition—Contents. The board of directors of the school district shall present to the superior court of the state of Washington in and for the county wherein is situated the real estate desired to be acquired for schoolhouse site purposes, a petition, reciting that the board of directors of such school district have selected certain real estate, describing it, as a schoolhouse site, or as additional grounds to an existing site, for such school district; that the site so selected, or some part thereof, describing it, belongs to a person or persons, naming him or them, that such school district has offered to give the owner or owners thereof therefor ----- dollars, and that the owner of such real estate has refused to accept the same therefor; that the board of school directors of such school district and the said owner or owners of such real estate are unable to agree upon the compensation to be paid by such school district to the owner or owners of such real estate therefor, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money by such school district to such owner or owners for the taking of such real estate for the use as a schoolhouse site for such school district;

or in case a jury be waived in the manner provided by law in other civil actions in courts of record, then that the compensation to be made as aforesaid, be ascertained and determined by the court, or judge thereof. [1909 p 372 § 2; 1903 c 111 § 2; RRS § 907.]

8.16.030 Notice of petition—Service. A notice, stating the time and place when and where such petition shall be presented to the court, or the judge thereof, together with a copy of such petition, shall be served on each and every person named therein as owner, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such notice shall be signed by the prosecuting attorney of the county wherein the real estate sought to be taken is situated, and may be served in the same manner as summons in a civil action in such superior court is authorized by law to be served. [1909 p 373 § 3; 1903 c 111 § 3; RRS § 908.]

Publication of notice in eminent domain proceedings: RCW 4.28.120.

8.16.040 Adjournment of proceedings—Further notice. The court may, upon application of the petitioner or of any owner of said real estate, or any person interested therein, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interests may be affected by such proceedings. [1909 p 373 § 4; 1903 c 111 § 4; RRS § 909.]

8.16.050 Hearing—Finding of necessity—Setting for trial. At the time and place appointed for the hearing of such petition, or to which the same may have been adjourned, if the court shall find that all parties interested in such real estate sought to be taken have been duly served with notice and a copy of the petition as above prescribed, and shall further find that such real estate sought to be taken is required and necessary for the purposes of a schoolhouse site, or as an addition to a schoolhouse site, for such school district, the court shall make an order reciting such findings, and shall thereupon set the hearing of such petition down for trial by a jury, as other civil actions are tried, unless a jury is waived in the manner provided by law in other civil actions. [1909 p 373 § 5; RRS § 910. Prior: 1903 c 111 § 5.]

8.16.060 Impaneling of jury. The jury impaneled to hear the evidence and determine the compensation to be paid to the owner or owners of such real estate desired for such schoolhouse site purpose shall consist of twelve persons unless a less number be agreed upon, and shall be selected, impaneled and sworn in the same manner that juries in other civil actions are selected, impaneled and sworn, provided a juror may be challenged for cause on the ground that he is a taxpayer of the district seeking the condemnation of any real estate. [1909 p 373 § 6; 1903 c 111 § 6; RRS § 911.]

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Petit jury defined: RCW 2.36.050.

8.16.070 Trial—View by jury. A judge of the superior court shall preside at the trial and witnesses may be examined in behalf of either party to the proceedings, as in other civil actions, and upon the request of all the parties interested in such proceedings the court shall cause the jury impaneled to hear the same, to view the premises sought to be taken, and upon the request of any less number of the persons interested in the proceedings, the court may cause the jury to view the premises, pending the hearing of the case. [1909 p 374 § 7; 1903 c 111 § 7; RRS § 912.]

Trial, civil actions, view by jury: RCW 4.44.270.

8.16.080 Verdict. Upon the close of the evidence, and the argument of counsel, the court shall instruct the jury as to the matters submitted to them, and the law pertaining thereto, whereupon the jury shall retire and deliberate and determine upon the amount of compensation in money that shall be paid to the owner or owners of the real estate sought to be taken for such schoolhouse site purposes therefor, which shall be the amount found by the jury to be the fair and full value of such premises; and when the jury shall have determined upon their verdict, they shall return the same to the court as in other civil actions. [1909 p 374 § 8; 1903 c 111 § 8; RRS § 913.]

Trial, civil actions, rendering of verdict: Chapter 4.44 RCW.

8.16.090 Ten jurors may render verdict. When ten of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the foreman, and the verdict so agreed upon shall be and stand as the verdict of the jury. [1909 p 374 § 9; 1903 c 111 § 9; RRS § 914.]

Verdict, civil actions, ten jurors may render: RCW 4.44.380.

8.16.100 Waiver of jury. In case a jury is waived, the compensation that shall be paid for the premises taken shall be determined by the court and the proceedings shall be the same as in the trial of issues of fact by the court in other civil actions. [1909 p 374 § 10; 1903 c 111 § 10; RRS § 915.]

8.16.110 Judgment—Payment of award—Decree of appropriation. Upon the verdict of the jury, or upon the determination by the court of the compensation to be paid for the property sought to be taken as herein provided, judgment shall be entered against such school district in favor of the owner or owners of the real estate sought to be taken, for the amount found as compensation therefor, and upon the payment of such amount by such school district to the clerk of such court for the use of the owner or owners of, and the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate sought to be taken, thereby vesting the title to the same in such school district; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated, and shall be recorded by such auditor like a deed of real estate, and with like effect. The money so

paid to the clerk of the court shall be by him paid to the person or persons entitled thereto, upon the order of the court. [1909 p 374 § 11; 1903 c 111 § 11; RRS § 916.]

Recording of deeds of real estate: Title 65 RCW.

8.16.120 Costs. All the costs of such proceedings in the superior court shall be paid by the school district initiating such proceedings. [1909 p 375 § 12; 1903 c 111 § 12; RRS § 917.]

8.16.130 Appeal. Either party may appeal from the judgment for compensation awarded for the property taken, entered in the superior court, to the supreme court or the court of appeals of the state within sixty days after the entry of the judgment, and such appeal shall bring before the supreme court or the court of appeals the justness of the compensation awarded for the property taken, and any error occurring on the hearing of such matter, prejudicial to the party appealing: *Provided, however,* That if the owner or owners of the land taken accepts the sum awarded by the jury or court, he or they shall be deemed thereby to have waived their right of appeal to the supreme court or the court of appeals. [1971 c 81 § 41; 1909 p 375 § 13; RRS § 918. Prior: 1903 c 111 § 13.]

8.16.140 Appeal does not delay possession if award paid. An appeal from such judgment by the owner or owners of the land sought to be taken, shall not have the effect to preclude the school district from taking possession of the premises sought, pending the appeal, provided the amount of the judgment against the school district shall have been paid in to the clerk of the court, as hereinbefore provided. [1909 p 375 § 14; 1903 c 111 § 14; RRS § 919.]

8.16.150 Designation of parties—Fees. In all proceedings under this chapter the school district seeking to acquire title to real estate for a schoolhouse site, shall be denominated plaintiff, and all other persons interested therein shall be denominated defendants; and in all such proceedings the clerk of the superior court wherein any such proceeding is brought shall charge nothing for his services, except in taking an appeal from the judgment entered in the superior court. [1909 p 375 § 15; 1903 c 111 § 15; RRS § 920.]

8.16.160 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

- 8.20.100 Payment of damages—Effect—Appeal.
- 8.20.110 Claimants, payment of—Conflicting claims.
- 8.20.120 Appeal.
- 8.20.130 Prosecution of work pending appeal—Bond.
- 8.20.140 Appropriation of railway right-of-way through canyon, pass, or defile.
- 8.20.150 Prior entry with consent—Condemnation avoids ouster.
- 8.20.160 Three year occupancy—Condemnation avoids ouster.
- 8.20.170 Suit for compensation by owner equivalent to condemnation.
- 8.20.180 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests.

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

Certain corporations, appropriation of public lands by: RCW 81.36.010.

Corporations conveying water, appropriation of lands by: RCW 90.16.100.

Easements over public lands: Chapter 79.36 RCW.

Electric light and power companies, appropriation by: RCW 80.32.060 through 80.32.080.

Eminent domain affecting corporations other than municipal: State Constitution Art. 12 § 10.

Gas and oil pipelines, appropriation for: RCW 81.88.020.

Grade crossing eliminations, appropriation for: RCW 81.53.180.

Railroad companies, appropriation by: RCW 81.36.010.

Railroads, rights-of-way: RCW 81.52.040, 81.53.180.

Right of eminent domain extended to mining companies: RCW 78.04.010.

State university—Rights-of-way to railroads: RCW 28B.20.330.

Street and electric railroads, appropriation by: RCW 81.64.040.

Telecommunications companies, appropriation by: RCW 80.36.010, State Constitution Art. 12 § 19.

Water power companies, appropriation by: RCW 90.16.030.

8.20.010 Petition for appropriation—Contents. Any corporation authorized by law to appropriate land, real estate, premises or other property for right-of-way or any other corporate purposes, may present to the superior court of the county in which any land, real estate, premises or other property sought to be appropriated shall be situated, or to the judge of such superior court in any county where he has jurisdiction or is holding court, a petition in which the land, real estate, premises or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by such corporation, to such owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such lands, real estate, premises or other property, or in case a jury be waived as in other civil cases in courts of record in the manner prescribed by law, then that the compensation to be made, as aforesaid, be ascertained and determined by the court, or judge thereof. [1890 p 294 § 1. Prior: 1888 p 58 § 1; RRS § 921.]

8.20.020 Notice—Contents—Service—Publication. A notice, stating briefly the objects of the

Chapter 8.20

EMINENT DOMAIN BY CORPORATIONS

Sections

- 8.20.010 Petition for appropriation—Contents.
- 8.20.020 Notice—Contents—Service—Publication.
- 8.20.060 Adjournment of proceedings—Further notice.
- 8.20.070 Adjudication of public use or private way of necessity.
- 8.20.080 Trial, how conducted.
- 8.20.090 Judgment—Decree of appropriation—Recording.

petition, and containing a description of the land, real estate, premises or property sought to be appropriated, and stating the time and place, when and where the same will be presented to the court, or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or, in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or, in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary or other director or trustee of such corporation. In case of persons under the age of eighteen years, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such person; in case of idiots, lunatics or distracted persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated is state, school or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated is situated. In all cases where the owner or person claiming an interest in such real or other property, is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of the agent or attorney of the corporation shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown, or cannot be ascertained by such deponent, service may be made by publication thereof in any newspaper published in the county where such lands are situated once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated. And such publication shall be deemed service upon each of such nonresident person or persons whose residence is unknown. Such notice shall be signed by the president, manager, secretary or attorney of the corporation; and in case the proceedings provided for in RCW 8.20.010 through 8.20.140 are instituted by the owner or any other person or party interested in the land, real estate, or other property sought to be appropriated, then such notice shall be signed by such owner, person or party interested, or his, her or its attorney. Such notice may be served by any competent person eighteen years of age or over. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been

served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, orders and other papers in the proceedings authorized by RCW 8.20.010 through 8.20.140 may be made as the superior court or the judge thereof may direct. [1971 ex.s. c 292 § 9; 1890 p 295 § 2; RRS § 922. Prior: 1888 p 58 § 2. Formerly RCW 8.20.020, 8.20.030, 8.20.040, 8.20.050.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Publication of

legal notices: Chapter 65.16 RCW.

notice in eminent domain proceedings: RCW 4.28.120.

Service of process where state land is involved: RCW 8.28.010.

8.20.060 Adjournment of proceedings—Further notice. The court or judge may, upon application of the petitioner or of any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected. [1890 p 297 § 3; RRS § 924. Prior: 1888 p 60 § 3.]

8.20.070 Adjudication of public use or private way of necessity. At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises, or other property described in said petition, have been duly served with said notice as above prescribed, and shall be further satisfied by competent proof that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, or is for a private use for a private way of necessity, and that the public interest requires the prosecution of such enterprise, or the private use is for a private way of necessity, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the purposes of such enterprise, the court or judge thereof may make an order, to be recorded in the minutes of said court, directing that a jury be summoned, or called, in the manner provided by law, to ascertain the compensation which shall be made for the land, real estate, premises or other property sought to be appropriated, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. [1927 c 88 § 1; 1897 c 46 § 1; 1890 p 297 § 4; RRS § 925. Prior: 1888 p 60 § 4.]

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Private ways of necessity: Chapter 8.24 RCW.

8.20.080 Trial, how conducted. A judge of the superior court shall preside at the trial which shall be held at such time as the court or the judge thereof may direct, at the courthouse in the county where the land, real estate, premises or other property sought to be appropriated is situated, and the jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to

the state, or to any county, by reason of the appropriation and use of such land, real estate, premises or other property by such corporation as aforesaid for any and all corporate purposes, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the purpose of such enterprise, irrespective of any benefit from any improvement proposed by such corporation. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in such proceedings shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. Upon the verdict of the jury, judgment shall be entered for the amount of the damages awarded to such owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property. In case a jury is waived as in civil cases in courts of record in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court or the judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court. [1890 p 297 § 5; RRS § 926.]

Witnesses in civil actions

*compelling attendance: Chapter 5.56 RCW.
examination: Title 5 RCW.*

8.20.090 Judgment—Decree of appropriation—

Recording. At the time of rendering judgment for damages, whether upon default or trial, if the damages awarded be then paid, or upon their payment, if not paid at the time of rendering such judgment, the court or judge thereof shall also enter a judgment or decree of appropriation of the land, real estate, premises, right-of-way or other property sought to be appropriated, thereby vesting the legal title to the same in the corporation seeking to appropriate such land, real estate, premises, right-of-way or other property for corporate purposes. Whenever said judgment or decree of appropriation shall affect lands, real estate or other premises, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate or other premises are situated, and shall be recorded by said auditor like a deed of real estate and with like effect. If the title to said land, real estate, premises or other property attempted to be acquired is found to be defective from any cause, the corporation may again institute proceedings to acquire the same, as in RCW 8.20.010 through 8.20.140 provided. [1891 c 46 § 1; 1890 p 298 § 6; RRS § 927.]

Rules of court: CR 54, 58.

Recording of deeds of real estate: Title 65 RCW.

8.20.100 Payment of damages—Effect—Appeal. Upon the entry of judgment upon the verdict of the jury or the decision of the court or judge thereof,

awarding damages as hereinbefore prescribed, the petitioner, or any officer of, or other person duly appointed by said corporation, may make payment of the damages assessed to the parties entitled to the same, and of the costs of the proceedings, by depositing the same with the clerk of said superior court, to be paid out under the direction of the court or judge thereof; and upon making such payment into the court of the damages assessed and allowed, and of the costs, to any land, real estate, premises or other property mentioned in said petition, such corporation shall be released and discharged from any and all further liability therefor, unless upon appeal the owner or other person or party interested shall recover a greater amount of damages; and in that case only for the amount in excess of the sum paid into said court, and the costs of appeal: *Provided*, That in case of an appeal to the supreme court or the court of appeals of the state by any party to the proceedings, the money so paid into the superior court by such corporation as aforesaid, shall remain in the custody of said court until the final determination of the proceedings by the said supreme court or the court of appeals. [1971 c 81 § 42; 1890 p 299 § 7; RRS § 929.]

8.20.110 Claimants, payment of—Conflicting

claims. Any person, corporation, state or county, claiming to be entitled to any money paid into court, as provided in RCW 8.20.010 through 8.20.140 may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate, premises or other property specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced and the conflicting claims to such land, real estate, premises or other property be determined according to law. [1890 p 299 § 8; RRS § 930. Prior: 1888 p 61 § 8.]

8.20.120 Appeal. Either party may appeal from the judgment for damages entered in the superior court, to the supreme court or the court of appeals of the state, within thirty days after the entry of judgment as aforesaid and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the amount of damages in respect to the parties to the appeal: *Provided, however*, That no bond shall be required of any person interested in the property sought to be appropriated by such corporation, but in case the corporation appropriating such land, real estate, premises or other property is appellant, it shall give a bond like that prescribed in RCW 8.20.130, to be executed, filed and approved in the same manner: *And provided further*, That if the owner of the land, real estate, premises or other property accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed

thereby to have waived conclusively an appeal to the supreme court or the court of appeals, and final judgment by default may be rendered in the superior court as in other cases. [1971 c 81 § 43; 1890 p 300 § 9; RRS § 931. Prior: 1888 p 61 § 9.]

8.20.130 Prosecution of work pending appeal—

Bond. The construction of any railway surface tramway, elevated cable tramway, or canal, or the prosecution of any works or improvements by any corporation as aforesaid shall not be hindered, delayed or prevented by the prosecution of the appeal of any party to the proceedings: *Provided*, The corporation aforesaid shall execute and file with the clerk of the court in which the appeal is pending a bond to be approved by said clerk, with sufficient sureties, conditioned that the persons executing the same shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy. [1897 c 46 § 2; 1890 p 300 § 10; RRS § 932. Prior: 1888 p 62 § 10.]

8.20.140 Appropriation of railway right-of-way through canyon, pass, or defile. Any railroad company whose right-of-way passes through any canyon, pass or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass or defile for the purpose of its road in common with the road first located or the crossing of other railroads at grade, and any railroad company authorized by law to appropriate land, real estate, premises or other property for right-of-way or any other corporate purpose may present a petition, in the manner and form hereinbefore provided, for the appropriation of a right-of-way through any canyon, pass or defile for the purpose of its road where right-of-way has already been located, condemned or occupied by some other railroad company through such canyon, pass or defile for the purpose of its road, and thereupon, like proceedings shall be had upon such petition as herein provided in other cases; and at the time of rendering judgment for damages, whether upon default or trial, the court or judge thereof shall enter a judgment or decree authorizing said railroad company to occupy and use said right-of-way, roadbed and track, if necessary, in common with the railroad company or companies already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common. [1890 p 301 § 12; RRS § 933.]

8.20.150 Prior entry with consent—Condemnation avoids ouster. No corporation authorized by law to condemn property for public use, which has heretofore entered or shall hereafter enter upon property for a public use with the consent of the record owner or the person or corporation in possession, shall be ousted from such possession or prevented from continuing the putting of such property to public use if before entry of judgment of ouster it shall institute proceedings in condemnation to acquire such property for public use, and shall thereafter

prosecute the same in good faith and pay any compensation which may be awarded therein. [1927 c 219 § 1; RRS § 921-1.]

Severability—1927 c 219: "If any section, provision or clause in this act be adjudged invalid the remainder of the act shall nevertheless remain valid." [1927 c 219 § 4.] This applies to RCW 8.20.150 through 8.20.170.

8.20.160 Three year occupancy—Condemnation avoids ouster. No corporation which shall have been or shall be in possession of property put to public use for three or more years, and while continuing to put such property to public use shall be ousted therefrom or prevented from continuing such use if prior to the entry of any judgment of ouster it shall institute condemnation proceedings to acquire such property for public use, and shall thereafter prosecute the same in good faith and pay any compensation awarded therein. [1927 c 219 § 2; RRS § 921-2.]

8.20.170 Suit for compensation by owner equivalent to condemnation. Nothing in RCW 8.20.150 through 8.20.170 shall prevent the owner of any such property suing for and recovering compensation for such property without instituting suit or proceedings to oust such corporation therefrom, and upon payment of the amount awarded such owner title to the property shall vest in such corporation as effectually as if acquired by proceedings in condemnation. [1927 c 219 § 3; RRS § 921-3.]

8.20.180 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.24

PRIVATE WAYS OF NECESSITY

Sections

8.24.010	Condemnation authorized—Private way of necessity defined.
8.24.030	Procedure for condemnation.
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Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

Adjudication of public use or private way of necessity: RCW 8.20.070.

8.24.010 Condemnation authorized—Private way of necessity defined. An owner, or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this

chapter, shall mean and include a right of way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over and through which timber, stone, minerals or other valuable materials and products may be transported and carried. [1913 c 133 § 1; RRS § 936-1. Prior: 1895 c 92 § 1. Formerly RCW 8.24.020, part.]

8.24.030 Procedure for condemnation. The procedure for the condemnation of land for a private way of necessity or for drains, flumes or ditches under the provisions of this chapter shall be the same as that provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies. [1913 c 133 § 2; RRS § 936-2. Prior: 1895 c 92 § 2.]

Condemnation by corporations: Chapter 8.20 RCW.

Right of eminent domain, railroads—Corporate powers and duties: RCW 81.36.010.

Special railroad eminent domain proceedings:

appropriation of railway right-of-way through canyon, pass or defile: RCW 8.20.140.

extensions, branch lines: RCW 81.36.060.

railroad crossings: RCW 81.53.180.

spur tracks—Limit as to eminent domain: RCW 81.52.040.

state university—Rights-of-way to railroads: RCW 28B.20.330.

8.24.040 Logging road must carry products of condemnees. That any person or corporation availing themselves of the provisions of this chapter for the purpose of acquiring a right-of-way for a logging road, as a condition precedent, contract and agree to carry and convey over such roads to either termini thereof any of the timber or other produce of the lands through which such right is acquired at any and all times, so long as said road is maintained and operated, and at reasonable prices; and a failure so to do shall terminate such right-of-way. The reasonableness of the rate shall be subject to determination by the utilities and transportation commission. [1913 c 133 § 3; RRS § 936-3. Prior: 1895 c 92 § 3.]

8.24.050 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. See RCW 8.25.270.

Chapter 8.25

ADDITIONAL PROVISIONS APPLICABLE TO EMINENT DOMAIN PROCEEDINGS

Sections	
8.25.010	Pretrial statement of compensation to be paid in event of settlement.
8.25.020	Payment to defray costs of evaluating offer—Amount.
8.25.070	Award of attorney's fees and witness fees to condemnee—Conditions to award.

8.25.073	Award of costs in air space corridor acquisitions—Conditions.
8.25.075	Costs—Award to condemnee or plaintiff—Conditions.
8.25.120	Conclusions of appraisers—Order for production and exchange between parties.
8.25.170	Payments not considered income or resources—Exemption from taxes—Not deductible from public assistance grants—Consideration of supplemental rent payments.
8.25.200	Acquisition of property subject to unpaid or delinquent local improvement assessments—Payment.
8.25.210	Special benefits to remaining property—Purpose.
8.25.220	Special benefits to remaining property—Options—Election by owner—Consent to creation of lien.
8.25.230	Special benefits to remaining property—Satisfaction or release of lien—Trial—Expiration of lien by operation of law.
8.25.240	Special benefits to remaining property—Judgment—Maximum amounts—Offsets—Interest.
8.25.250	Special benefits to remaining property—Attorney fees—Witness fees.
8.25.260	Special benefits to remaining property—Lien foreclosure proceedings—Stay.
8.25.270	Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests.

8.25.010 Pretrial statement of compensation to be paid in event of settlement. In all actions for the condemnation of property, or any interest therein, at least thirty days prior to the date set for trial of such action the condemnor shall serve a written statement showing the amount of total just compensation to be paid in the event of settlement on each condemnee who has made an appearance in the action. [1965 ex.s. c 125 § 1.]

8.25.020 Payment to defray costs of evaluating offer—Amount. There shall be paid by the condemnor in respect of each parcel of real property acquired by eminent domain or by consent under threat thereof, in addition to the fair market value of the property, a sum equal to the various expenditures actually and reasonably incurred by those with an interest or interests in said parcel in the process of evaluating the condemnor's offer to buy the same, but not to exceed a total of two hundred dollars. In the case of multiple interests in a parcel, the division of such sum shall be determined by the court or by agreement of the parties. [1967 ex.s. c 137 § 1; 1965 ex.s. c 125 § 2.]

8.25.070 Award of attorney's fees and witness fees to condemnee—Conditions to award. (1) Except as otherwise provided in subsection (3) of this section, if a trial is held for the fixing of the amount of compensation to be awarded to the owner or party having an interest in the property being condemned, the court shall award the condemnee reasonable attorney's fees and reasonable expert witness fees in the event of any of the following:

(a) If condemnor fails to make any written offer in settlement to condemnee at least thirty days prior to commencement of said trial; or

(b) If the judgment awarded as a result of the trial exceeds by ten percent or more the highest written offer in settlement submitted to those condemnees appearing in the action by condemnor in effect thirty days before the trial.

(2) The attorney general or other attorney representing a condemner in effecting a settlement of an eminent domain proceeding may allow to the condemnee reasonable attorney fees.

(3) Reasonable attorney fees and reasonable expert witness fees authorized by this section shall be awarded only if the condemnee stipulates, if requested to do so in writing by the condemner, to an order of immediate possession and use of the property being condemned within thirty days after receipt of the written request, or within fifteen days after the entry of an order adjudicating public use whichever is later and thereafter delivers possession of the property to the condemner upon the deposit in court of a warrant sufficient to pay the amount offered as provided by law. In the event, however, the condemner does not request the condemnee to stipulate to an order of immediate possession and use prior to trial, the condemnee shall be entitled to an award of reasonable attorney fees and reasonable expert witness fees as authorized by subsections (1) and (2) of this section.

(4) Reasonable attorney fees as authorized in this section shall not exceed the general trial rate, per day customarily charged for general trial work by the condemnee's attorney for actual trial time and his or her hourly rate for preparation. Reasonable expert witness fees as authorized in this section shall not exceed the customary rates obtaining in the county by the hour for investigation and research and by the day or half day for trial attendance.

(5) In no event may any offer in settlement be referred to or used during the trial for any purpose in determining the amount of compensation to be paid for the property. [1984 c 129 § 1; 1971 ex.s. c 39 § 3; 1967 ex.s. c 137 § 3.]

Court appointed experts: Rules of court: ER 706.

8.25.073 Award of costs in air space corridor acquisitions—Conditions. A superior court having jurisdiction of a proceeding instituted by a condemner to acquire an air space corridor together with other property rights shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees, subject to the provisions of subsection (4) of RCW 8.25.070, if—

(1) there is a final adjudication that the condemner cannot acquire the air space corridor or other property rights by condemnation; or

(2) the proceeding is abandoned by the condemner. [1971 ex.s. c 39 § 2.]

8.25.075 Costs—Award to condemnee or plaintiff—Conditions. (1) A superior court having jurisdiction of a proceeding instituted by a condemner to acquire real property shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees if:

(a) There is a final adjudication that the condemner cannot acquire the real property by condemnation; or

(b) The proceeding is abandoned by the condemner.

(2) In effecting a settlement of any claim or proceeding in which a claimant seeks an award from an acquiring agency for the payment of compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner, the attorney general or other attorney representing the acquiring agency may include in the settlement amount, when appropriate, costs incurred by the claimant, including reasonable attorneys' fees and reasonable expert witness fees.

(3) A superior court rendering a judgment for the plaintiff awarding compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner shall award or allow to such plaintiff costs including reasonable attorney fees and reasonable expert witness fees, but only if the judgment awarded to the plaintiff as a result of trial exceeds by ten percent or more the highest written offer of settlement submitted by the acquiring agency to the plaintiff at least thirty days prior to trial.

(4) Reasonable attorney fees and expert witness fees as authorized in this section shall be subject to the provisions of subsection (4) of RCW 8.25.070 as now or hereafter amended. [1977 ex.s. c 72 § 1; 1971 ex.s. c 240 § 21.]

Severability—1971 ex.s. c 240: See RCW 8.26.900.

8.25.120 Conclusions of appraisers—Order for production and exchange between parties. After the commencement of a condemnation action, upon motion of either the condemner or condemnee, the court may order, upon such terms and conditions as are fair and equitable the production and exchange of the written conclusions of all the appraisers of the parties as to just compensation owed to the condemnee, as prepared for the purpose of the condemnation action, and the comparable sales, if any, used by such appraisers. The court shall enter such order only after assurance that there will be mutual, reciprocal and contemporaneous disclosures of similar information between the parties. [1969 ex.s. c 236 § 8.]

8.25.170 Payments not considered income or resources—Exemption from taxes—Not deductible from public assistance grants—Consideration of supplemental rent payments. No payment received by a displaced person under RCW 8.25.040 through 8.25.060 and 8.25.080 through 8.25.930 shall be considered as income for the purposes of any personal income tax or any tax imposed under Title 82 RCW as now or hereafter amended. Such payments shall not be considered as income or resources, and such payments shall not be deducted from any amount which any recipient would otherwise be entitled, under Title 74 RCW, as now or hereafter amended: *Provided*, That supplemental rent payments paid under this chapter may be considered in determining the amount of public assistance to which a recipient may be entitled to the extent that there is or would be a duplication of a shelter allowance as established by the public assistance standards. [1971 ex.s. c 9 § 1; 1969 ex.s. c 236 § 13.]

Reviser's note: (1) This section was also repealed by 1971 ex.s. c 240 § 22 without cognizance of its amendment by 1971 ex.s. c 9 § 1.

(2) RCW 8.25.040 through 8.25.060, 8.25.080 through 8.25.110, 8.25.130 through 8.25.190, 8.25.900 through 8.25.930 referred to in this section were repealed by 1971 ex.s. c 240 § 22.

8.25.170 Payments not considered income or resources—Exemption from taxes—Not deductible from public assistance

grants—**Consideration of supplemental rent payments.** [1969 ex.s. c 236 § 13.] Repealed by 1971 ex.s. c 240 § 22. Later enactment, see RCW 8.26.140.

Reviser's note: This section was also amended by 1971 ex.s. c 9 § 1 without cognizance of the repeal thereof.

8.25.200 Acquisition of property subject to unpaid or delinquent local improvement assessments—Payment. See RCW 79.44.190.

8.25.210 Special benefits to remaining property—Purpose. It is the purpose of *this 1974 act to provide procedures whereby more just and equitable results are accomplished when real property has been condemned for a highway, road, or street and an award made which is subject to a setoff for benefits inuring to the condemnee's remaining land. [1974 ex.s. c 79 § 1.]

***Reviser's note:** "this 1974 act" consists of RCW 8.25.210, 8.25.220, 8.25.230, 8.25.240, 8.25.250, and 8.25.260.

8.25.220 Special benefits to remaining property—Options—Election by owner —Consent to creation of lien. Whenever land, real estate, premises or other property is to be taken or damaged for a highway, road, or street and the amount offered as just compensation includes a setoff in recognition of special benefits accruing to a remainder portion of the property the property owner shall elect one of the following options:

(1) Trial on the question of just compensation which shall finally determine the amount of just compensation; or

(2) Acceptance of the offered amount as a final determination of just compensation; or

(3) Demand the full amount of the fair market value of any property taken plus the amount of damages if any caused by such acquisition to a remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property as those several amounts are agreed to by the parties; or

(4) Demand a trial before a jury unless jury be waived to establish the fair market value of any property taken and the amount of damages if any caused by such acquisition to a remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property.

The selection of the option set forth in subsections (3) or (4) of this section is subject to the consent by the property owner to the creation and recording of a lien against the remainder in the amount of the fair market value of any property taken plus the amount of damages caused by such acquisition to the remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property, plus interest as it accrues. [1974 ex.s. c 79 § 2.]

8.25.230 Special benefits to remaining property—Satisfaction or release of lien—Trial—Expiration of lien by operation of law. A lien established as provided in RCW 8.25.220 shall be satisfied or released by:

(1) Agreement between the parties to that effect; or

(2) Payment of the lien amount plus interest at the rate of five percent per annum; or

(3) Payment of the amount of offsetting special benefits as established pursuant to RCW 8.25.220(3) plus interest at the rate of five percent per annum within four years of the date of acquisition; or

(4) Satisfaction of a judgment lien entered as a result of a trial before a jury unless jury be waived to establish the change in value of the remainder of the original parcel because of the construction of the project involved: *Provided*, That if the result of the trial is to find no special benefits then the lien is extinguished by operation of law. Trial may be had on the petition of any party to the superior court of the county wherein the subject remainder lies after notice of intent to try the matter of special benefits has been served on all persons having an interest in the subject remainder. Such notice shall be filed with the clerk of the superior court and personally served upon all persons having an interest in the subject remainder. Filing a notice of intent to try the matter of special benefits shall be accompanied by a fee in the amount paid when filing a petition in condemnation.

(5) Upon expiration of six years time from the date of acquisition without commencement of proceedings to foreclose the lien or try the matter of special benefits to the remainder of the property, the lien shall terminate by operation of law. [1974 ex.s. c 79 § 3.]

8.25.240 Special benefits to remaining property—Judgment—Maximum amounts—Offsets—Interest. A judgment entered as a result of a trial on the matter of special benefits shall not exceed the previously established sum of (1) the fair market value of any property taken; (2) the amount of damages if any to a remainder of the property, without offsetting against either of them the amount of any special benefits accruing to a remainder of the property; (3) the interest at five percent per annum accrued thereon to the date of entry of the judgment. [1974 ex.s. c 79 § 4.]

8.25.250 Special benefits to remaining property—Attorney fees—Witness fees. Attorney fees and expert witness fees of the condemnee may be allowed by the attorney general or other attorney representing a condemnor to the extent provided in RCW 8.25.070 and shall be awarded by the court as authorized by this section to the extent provided in RCW 8.25.070 for trial and trial preparation: (1) In the event a trial is held as authorized by RCW 8.25.220 except the judgment awarded to the condemnor must exceed by ten percent or more the highest written offer in settlement of the issue to be determined by trial submitted by the condemnor to those condemnees appearing in the action at least thirty days prior to commencement of the trial; (2) in the event of a trial on the matter of special benefits as authorized by RCW 8.25.230(4) except the judgment awarded to the condemnor must be no more than ninety percent of the lowest written offer in settlement submitted by the condemnor to the condemnees appearing in the action at least thirty days prior to commencement of the trial on the matter of special benefits. [1974 ex.s. c 79 § 5.]

8.25.260 Special benefits to remaining property—Lien foreclosure proceedings—Stay. A condemnor may foreclose the lien authorized by RCW 8.25.220 by bringing an action and applying for summary judgment pursuant to civil rule 56 and may execute first upon the remainder property but such proceedings shall not be commenced before five years time has passed from the date of acquisition by the condemnor. A property owner may stay proceedings to enforce the lien authorized by RCW 8.25.220 by commencement of an action to try the matter of special benefits. [1974 ex.s. c 79 § 6.]

8.25.270 Appointment of guardian ad litem for infants, incompetent or disabled persons—Protection of interests. When it shall appear in any petition or otherwise at any time during the proceedings for condemnation brought pursuant to chapters 8.04, 8.08, 8.12, 8.16, 8.20, and 8.24 RCW, each as now or hereafter amended, that any infant, or allegedly incompetent or disabled person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for such infant or allegedly incompetent or disabled person to appear and assist in his, her or their defense unless a guardian or limited guardian has previously been appointed, in which case the duty to appear and assist shall be delegated to the properly qualified guardian or limited guardian. The court shall make such orders or decrees as it shall deem necessary to protect and secure the interest of the infant or allegedly incompetent or disabled person in the property sought to be condemned or the compensation which shall be awarded therefore. [1977 ex.s. c 80 § 12.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Chapter 8.26

RELOCATION ASSISTANCE—REAL PROPERTY ACQUISITION POLICY

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8.26.900	Severability—1971 ex.s. c 240.
8.26.910	Effective date—1971 ex.s. c 240.

8.26.010 Purposes. The purposes of this chapter are:

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

(2) To encourage and expedite the acquisition of real property for public works programs by agreements with owners, to reduce litigation and relieve congestion in the courts, to assure consistent treatment for owners affected by state and local programs, and to promote public confidence in state and local land acquisition practices. [1971 ex.s. c 240 § 1.]

8.26.020 Definitions. As used in this chapter—

(1) The term "state" means any department, commission, agency, or instrumentality of the state of Washington.

(2) The term "local public body" as used in this chapter applies to any county, city or town, or other municipal corporation or political subdivision of the state or any instrumentality of any of the foregoing but only with respect to any program or project the cost of which is financed in whole or in part by a federal agency. Notwithstanding the limitations of this subsection, the governing body of any county, city or town, or other municipal corporation or political subdivision of the state or any instrumentality of any of the foregoing may elect to comply with all the provisions of this chapter in connection with programs and projects not receiving federal assistance.

(3) The term "person" means any individual, partnership, corporation, or association.

(4) The term "displaced person" means any person who, on or after July 1, 1971, moves from real property lawfully occupied by him, or moves his personal property from real property on which it was lawfully located, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by the state, or a local public body. Solely for the purposes of subsections (1) and (2) of RCW 8.26.040 and RCW 8.26.070, the term "displaced person" includes any person who, on or after July 1, 1971, moves from real property or moves his personal property from real property, as a result of the acquisition of, or the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for a program or project undertaken by the state or a local public body.

(5) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(a) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purposes of subsection (1) of RCW 8.26.040, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by means of an outdoor advertising display or displays, otherwise lawfully erected and maintained, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(6) The term "farm operations" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or for home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this state, together with the credit instruments, if any, secured thereby. The term "mortgage" shall include real estate contracts. [1972 ex.s. c 34 § 1; 1971 ex.s. c 240 § 2.]

Application—1972 ex.s. c 34: "Sec. 2. The amendatory language contained in section 1 of this 1972 amendatory act shall apply only to persons displaced after the effective date of this 1972 amendatory act [February 20, 1972]." [1972 ex.s. c 34 § 2.]

Reviser's note: The "amendatory language" referred to in 1972 ex.s. c 34 § 2 consists of the deletion of the word "not" in the last sentence of the above section.

8.26.030 Review of determinations—Construction of chapter. (1) Any determination by the head of a state agency or local public body administering a program or project as to payments under this chapter shall be subject to review pursuant to chapter 34.04 RCW; otherwise, no provision of this chapter shall be construed to give any person a cause of action in any court.

(2) The provisions of RCW 8.26.180 create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(3) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence on July 1, 1971. [1971 ex.s. c 240 § 3.]

8.26.040 Displacement and relocation expenses—Payments. (1) Whenever the acquisition of real property for a program or project undertaken by the state or a local public body will result in the displacement of any person on or after July 1, 1971, the acquiring agency shall make a payment to any displaced person, upon proper application as approved by the agency, for:

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

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the acquiring agency; and

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

(2) Any displaced person eligible for payments under subsection (1) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (1) of this section may receive a moving expense allowance, determined according to a schedule established by the state department of transportation, not to exceed three hundred dollars, and a dislocation allowance of two hundred dollars.

(3) Any displaced person eligible for payments under subsection (1) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (1) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no payment may be made under this subsection unless the acquiring agency is satisfied that the business:

(a) Cannot be relocated without a substantial loss of its existing patronage; and

(b) Is not a part of a commercial enterprise having at least one other establishment not being acquired, which is engaged in the same or similar business. For the purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before federal or local income taxes, during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for the project, or during such other period as the acquiring agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. [1984 c 7 § 1; 1971 ex.s. c 240 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

8.26.050 Displacement and relocation expenses—Additional payments to displaced home owner. (1) In addition to payments otherwise authorized by this chapter, the state or local public body shall make an additional payment not in excess of fifteen thousand dollars to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than one hundred eighty days before the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) The amount, if any, which when added to the acquisition costs of the dwelling acquired, equals the reasonable cost of a dwelling adequate to accommodate the

displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subsection shall be made in accordance with standards established by the state department of transportation.

(b) The amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. This amount shall be paid only if the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than one hundred eighty days before the initiation of negotiations for the acquisition of the dwelling. This amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder of the term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be determined by regulations issued pursuant to RCW 8.26.110.

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

(2) The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one-year period beginning on the date on which he receives from the acquiring agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. [1984 c 7 § 2; 1971 ex.s. c 240 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

8.26.060 Displacement and relocation expenses—
Additional payments for person not eligible under RCW 8.26.050. In addition to amounts otherwise authorized by this chapter, the state or local public body shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under RCW 8.26.050 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed four thousand dollars, or

(2) the amount necessary to enable such person to make a down payment (including incidental expenses described in RCW 8.26.050(1)(c)) on the purchase of

decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars, except that if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. [1971 ex.s. c 240 § 6.]

8.26.070 Relocation assistance advisory services. (1) Whenever the acquisition of real property for a program or project undertaken by the state or a local public body will result in the displacement of any person on or after July 1, 1971, the acquiring agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (2) of this section. If the acquiring agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the agency may offer such person relocation advisory services under this program.

(2) Each relocation assistance advisory program required by subsection (1) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(a) determine the need, if any, of displaced persons, for relocation assistance;

(b) provide current and continuing information on the availability, prices, and rentals, of comparable, decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(c) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(d) supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons;

(e) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation; and

(f) secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned proposed governmental actions in the community or near-by area which may affect the carrying out of the relocation program. [1971 ex.s. c 240 § 7.]

8.26.080 Agreements for federal assistance authorized—Providing surplus housing or rehabilitation of housing. (1) If a project of the state or a local public body cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the state or local public body determines that such housing cannot otherwise be made available, such agency may enter into an agreement with any federal agency to obtain financial or other assistance as may be authorized by section 206(a) of Public Law 91-

646 and take such further action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(2) Any state agency or local public body is authorized to move housing onto any lands surplus to the agency's needs which are otherwise suitable for residential housing or to rehabilitate existing housing owned by the agency for the purpose of providing replacement housing. [1971 ex.s. c 240 § 8.]

8.26.090 Assurance of availability of dwellings required prior to displacement. Whenever the acquisition of real property for a program or project undertaken by the state or a local public body will result in the displacement of any person on or after July 1, 1971, such agency shall assure that, within a reasonable period of time, prior to displacement there will be available, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment; except that regulations issued pursuant to RCW 8.26.110 may prescribe situations when these assurances may be waived. [1971 ex.s. c 240 § 9.]

8.26.100 No person required to move unless replacement housing assured. No person shall be required to move from his dwelling on or after July 1, 1971, on account of any project of the state or local public body, unless the agency is satisfied that replacement housing, in accordance with RCW 8.26.090 is available to such person. [1971 ex.s. c 240 § 10.]

8.26.110 Rules and regulations. (1) The state secretary of transportation after full consultation with the department of general administration shall adopt such rules consistent with this chapter and Public Law 91-646, as may be necessary to assure:

(a) That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(b) That a displaced person who makes proper application for a payment authorized for that person by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(c) That any person aggrieved by a determination as to eligibility for payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the executive head of the state agency or local public body.

(2) The state secretary of transportation after full consultation with the department of general administration may prescribe such other regulations and procedures, consistent with the provisions of this chapter, as deemed necessary or appropriate to carry out this chapter. [1984 c 7 § 3; 1971 ex.s. c 240 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

8.26.120 Contracts for services—Use of services of other agencies. In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, a state agency or any local public body may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this chapter through any federal, state or local governmental agency or instrumentality having an established organization for conducting relocation assistance programs. A state agency or local public body shall, in carrying out the relocation assistance activities described in RCW 8.26.110, whenever practicable, utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. [1971 ex.s. c 240 § 12.]

8.26.130 Review. Any person aggrieved by a determination as to eligibility for payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the executive head of the state agency or local public body having authority over the applicable program or project. [1971 ex.s. c 240 § 13.]

8.26.140 Payments not considered income or resource. No payment received under RCW 8.26.010 through 8.26.130 shall be considered as income for the purposes of any income tax or any tax imposed under Title 82 RCW as now or hereafter amended; or for the purpose of determining the eligibility or extent of eligibility of any person for assistance under the social security act or any other federal law. Such payments shall not be considered as income or resources, and such payments shall not be deducted from any amount to which any recipient would otherwise be entitled, under Title 74 RCW, as now or hereafter amended: *Provided*, That supplemental rent payments may be considered in determining the amount of public assistance to which a recipient may be entitled to the extent that there is or would be a duplication of a shelter allowance as established by the public assistance standards. [1971 ex.s. c 240 § 14.]

8.26.150 Acquisition funds available to carry out chapter. Funds appropriated or otherwise available to any state agency or local public body for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this chapter as applied to that program or project. [1971 ex.s. c 240 § 15.]

8.26.160 Person displaced due to federal housing or city demonstration acts included. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after July 1, 1971, as a direct result of any project or program which receives federal financial assistance under title I of the Housing Act of 1949 (P.L. 81-171), as amended, or as a

result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 (P.L. 89-754) shall, for the purposes of this chapter, be deemed to have been displaced as the result of the acquisition of real property. [1971 ex.s. c 240 § 16.]

8.26.170 Agreements among agencies and with federal government authorized. Any state agency and any city or town or county or the instrumentalities of any of the foregoing are authorized to enter into such agreements with each other or with the United States as may be necessary to comply with the provisions of section 218 of Public Law 91-646 in order to obtain real property from the United States for the purpose of providing replacement housing. [1971 ex.s. c 240 § 17.]

8.26.180 Policy guides for agencies acquiring real property. Every state agency and local public body acquiring real property in connection with any program or project shall, to the greatest extent practicable, be guided by the following policies:

(1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during his inspection of the property.

(3) Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation therefor, and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The acquiring agency shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where appropriate the just compensation for the real property acquired, for damages to remaining real property, and for benefits to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or deposited with a court having jurisdiction of condemnation of such property, in accordance with applicable law, for the benefit of the owner an amount not less than the acquiring agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move his business or farm operation without at least ninety days written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the acquiring agency shall offer to acquire the entire property. [1971 ex.s. c 240 § 18.]

8.26.190 Acquisition of adversely affected improvements. (1) Where any interest in real property is acquired, an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which is required to be removed from such real property or which is determined to be adversely affected by the use to which such real property will be put shall be acquired.

(2) For the purpose of determining the just compensation to be paid for any building, structure or other improvement required to be acquired as above set forth, such building, structure or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure or improvement at the expiration of his term, and the fair market value which such building, structure or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(3) Payment for such buildings, structures or improvements as set forth above shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer and release all his right, title and interest in and to such improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures or other improvements shall be

construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of this state. [1971 ex.s. c 240 § 19.]

8.26.200 Owner to be reimbursed for certain fees, taxes and costs. A state agency or a local public body acquiring real property, as soon as practicable after the date of payment of the purchase price or the date or deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses the owner necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;

(2) penalty costs for full or partial prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier. [1971 ex.s. c 240 § 20.]

8.26.210 Award of costs, attorney's fees, witness fees—Conditions. See RCW 8.25.070, 8.25.075.

8.26.900 Severability—1971 ex.s. c 240. If any provision of this 1971 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. [1971 ex.s. c 240 § 23.]

8.26.910 Effective date—1971 ex.s. c 240. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1971. [1971 ex.s. c 240 § 24.]

Chapter 8.28

MISCELLANEOUS PROVISIONS

Sections

- 8.28.010 Where state land is involved—Service of process—Filing of decree—Duty of land commissioner.
- 8.28.030 Notice where military land is involved.
- 8.28.040 Interest on verdict fixed—Suspension during pendency of appeal.
- 8.28.050 City in adjoining state may condemn watershed property.
- 8.28.070 Acquisition of property subject to unpaid or delinquent local improvement assessments—Payment.

Easements over public lands: Chapter 79.01 RCW.

Opening of roads, railroads through cemetery—Consent required: RCW 68.24.180.

Petroleum leases—Rights-of-way over public lands: RCW 79.14.140.

*Water rights
artesian wells, rights-of-way to: RCW 90.36.010.*

*of the United States—Right of eminent domain: RCW 90.40.010.
right of eminent domain: RCW 90.03.040.*

8.28.010 Where state land is involved—Service of process—Filing of decree—Duty of land commissioner. In all condemnation proceedings brought for the purpose of appropriating any public land owned by the state or in which the state has an interest, service of process shall be made upon the commissioner of public lands.

When in any condemnation proceeding a decree is entered appropriating public lands owned by the state or in which the state has an interest, or any interest in or rights over such lands, it shall be the duty of the plaintiff to cause to be filed in the office of the commissioner of public lands a certified copy of such decree, together with a plat of the lands appropriated and the lands contiguous thereto, in form and substance as prescribed and required by the commissioner of public lands, showing in detail the lands appropriated, and to pay to the commissioner of public lands, or into the registry of the court, the amount of compensation and damages fixed and awarded in the decree. Upon receipt of such decree, plat, compensation and damages, the commissioner of public lands shall examine the same, and if he shall find that the final decree and proceedings comply with the original petition and notice and any amendment duly authorized, and that no additional interest of the state has been taken or appropriated through error or mistake, he shall cause notations thereof to be made upon the abstracts, records and tract books in his office, and shall issue to the plaintiff his certificate, reciting compliance, in substance, with the above requirements, particularly describing the lands appropriated, and shall forthwith transmit the amount received as compensation and damages to the state treasurer, as in the case of sale of land, and the subdivision of land through which any right of way is appropriated shall thereafter be sold or leased subject to the right of way. [1927 c 255 § 104; RRS § 7797-104. Formerly RCW 8.28.010 and 8.28.020.]

8.28.030 Notice where military land is involved. Whenever any land, real estate, premises or other property owned by the state of Washington and used for military purposes shall be involved in or affected by any eminent domain, condemnation, local improvement or other special assessment proceeding whatsoever, in addition to the notices elsewhere provided by law, the officer or board required by law to give notice of such proceedings shall cause to be served upon the adjutant general at least twenty days in advance of any hearing therein, a written notice, setting forth the nature of the proceedings, the description of such state property sought to be involved therein or affected thereby and the amount of the proposed assessment therein. [1917 c 107 § 125; RRS § 8600.]

Condemnation for military purposes: RCW 8.04.170, 8.04.180.

8.28.040 Interest on verdict fixed—Suspension during pendency of appeal. Whenever in any eminent

domain proceeding, heretofore or hereafter instituted for the taking or damaging of private property, a verdict shall have been returned by the jury, or by the court if the case be tried without a jury, fixing the amount to be paid as compensation for the property so to be taken or damaged, such verdict shall bear interest at the maximum rate of interest permitted at that time under RCW 19.52.020 from the date of its entry to the date of payment thereof: *Provided*, That the running of such interest shall be suspended, and such interest shall not accrue, for any period of time during which the entry of final judgment in such proceeding shall have been delayed solely by the pendency of an appeal taken in such proceeding. [1984 c 129 § 2; 1943 c 28 § 1; Rem. Supp. 1943 § 936-4.]

8.28.050 City in adjoining state may condemn watershed property. That any municipal corporation of any state adjoining the state of Washington may acquire title to any land or water right within the state of Washington, by purchase or condemnation, which lies within any watershed from which said municipal corporation obtains or desires to obtain its water supply. [1909 c 16 § 1; RRS § 9280.]

8.28.070 Acquisition of property subject to unpaid or delinquent local improvement assessments—Payment. See RCW 79.44.190.

Title 9

CRIMES AND PUNISHMENTS

(See also Washington Criminal Code, Title 9A RCW)

Chapters

- 9.01 General provisions.
- 9.02 Abortion.
- 9.03 Abandoned refrigeration equipment.
- 9.04 Advertising, crimes relating to.
- 9.05 Anarchy and sabotage.
- 9.08 Animals, crimes relating to.
- 9.12 Barratry.
- 9.16 Brands and marks, crimes relating to.
- 9.18 Bidding offenses—Bribery or corruption—
Offender as witness.
- 9.23 Contempt.
- 9.24 Corporations, crimes relating to.
- 9.26A Credit cards, crimes relating to.
- 9.27 Interference with court.
- 9.31 Escaped prisoner recaptured.
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- 9.46 Gambling—1973 act.
- 9.47 Gambling.
- 9.47A Inhaling toxic fumes.
- 9.51 Juries, crimes relating to.
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- 9.66 Nuisance.
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- 9.86 United States and state flags, crimes relating to.
- 9.91 Miscellaneous crimes.
- 9.92 Punishment.
- 9.94 Prisoners—State penal institutions.
- 9.94A Sentencing reform act of 1981.
- 9.95 Indeterminate sentences.
- 9.95B Interstate parole and probation hearing procedures.
- 9.96 Restoration of civil rights.
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- 9.98 Prisoners—Untried indictments, informations, complaints.
- 9.100 Agreement on detainees.

Civil disorder, proclamation of state of emergency, governor's powers, penalties: RCW 43.06.200 through 43.06.270.

Criminal justice training commission—Education and training boards: Chapter 43.101 RCW.

Health care false claim act: Chapter 48.80 RCW.

For list of miscellaneous crimes see list following chapter 9.91 RCW digest.

Threats against governor or family: RCW 9A.36.090.

Victims of crimes, compensation: Chapter 7.68 RCW.

Washington Criminal Code: Title 9A RCW.

Chapter 9.01

GENERAL PROVISIONS

Sections

- 9.01.055 Citizen immunity if aiding officer, scope—When.
- 9.01.110 Omission, when not punishable.
- 9.01.120 Civil remedies preserved.
- 9.01.130 Sending letter, when complete.
- 9.01.160 Application to existing civil rights.
- 9.01.200 Defense of person or property against heinous crime—Reimbursement by state for expenses of defendant.

Conviction of lesser crime: RCW 10.61.010.

Employment of prisoners by county sheriff: RCW 36.28.100.

Forfeiture or impeachment rights preserved: RCW 42.04.040.

Former acquittal or conviction: Chapter 10.43 RCW.

Indians, jurisdiction in criminal and civil causes: Chapter 37.12 RCW.

Intent to defraud, proof: RCW 10.58.040.

Juvenile offenders, commitment: Chapters 13.04, 13.34 RCW.

Neglect of duty by public officer: RCW 42.20.100.

Presumption of innocence: RCW 10.58.020.

Prosecuting attorneys, duties in general: Chapter 36.27 RCW.

Self-incrimination: RCW 10.52.090.

9.01.055 Citizen immunity if aiding officer, scope—When. Private citizens aiding a police officer, or other officers of the law in the performance of their duties as police officers or officers of the law, shall have the same civil and criminal immunity as such officer, as a result of any act or commission for aiding or attempting to aid a police officer or other officer of the law, when such officer is in imminent danger of loss of life or grave bodily injury or when such officer requests such assistance and when such action was taken under emergency conditions and in good faith. [1969 c 37 § 1.]

9.01.110 Omission, when not punishable. No person shall be punished for an omission to perform an act when such act has been performed by another acting in his behalf, and competent to perform it. [1909 c 249 § 23; RRS § 2275.]

9.01.120 Civil remedies preserved. The omission to specify or affirm in this act any liability to any damages,

penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, shall not affect any right to recover or enforce the same. [1909 c 249 § 44; RRS § 2296.]

Effect—1909 c 249: "The repeal or abrogation by this act of any existing law shall not revive any former law heretofore repealed, nor affect any right already existing or accrued or any action or proceeding already taken, except as in this act provided; nor does it repeal any private statute or statute affecting civil rights or liabilities not expressly repealed." [1909 c 249 § 50.] "this act" (chapter 249, Laws of 1909) has been codified as follows: RCW 9.01.010–9.01.050, 9.01.060, 9.01.070, 9.01.090–9.01.114, 9.01.120, 9.01.130, 9.01.150–9.01.190, 9.02.010–9.02.050, 9.04.020, 9.04.030, 9.05.010–9.05.050, 9.05.150, 9.05.160, 9.08.010–9.08.040, 9.09.010–9.09.060, 9.11.010–9.11.050, 9.12.010–9.12.020, 9.15.010, 9.15.020, 9.16.010–9.16.070, 9.16.100–9.16.150, 9.18.010–9.18.110, 9.19.010–9.19.050, 9.22.010–9.22.030, 9.23.010, 9.24.010–9.24.050, 9.26.010, 9.26.020, 9.27.010–9.27.100, 9.30.010–9.30.050, 9.31.010–9.31.090, 9.33.010–9.33.060, 9.34.010, 9.34.020, 9.37.010–9.37.040, 9.38.010–9.38.030, 9.38.050, 9.40.010–9.40.040, 9.41.180, 9.41.230–9.41.260, 9.44.010–9.44.080, 9.45.010–9.45.060, 9.45.070–9.45.120, 9.45.150–9.45.170, 9.47.080–9.47.100, 9.47.120, 9.47.130, 9.48.010–9.48.170, 9.51.010–9.51.060, 9.52.030, 9.52.040, 9.54.010, 9.54.060–9.54.110, 9.54.120, 9.54.130, 9.55.010, 9.55.020, 9.58.010–9.58.090, 9.58.110, 9.58.120, 9.59.010–9.59.050, 9.61.010–9.61.070, 9.62.010, 9.62.020, 9.65.010–9.65.030, 9.66.010–9.66.050, 9.68.010, 9.68.020, 9.68.030, 9.69.010–9.69.090, 9.72.010–9.72.110, 9.73.010, 9.73.020, 9.75.010, 9.75.020, 9.76.020–9.76.050, 9.79.010–9.79.120, 9.80.010–9.80.050, 9.82.010–9.82.030, 9.83.010, 9.83.060, 9.86.020, 9.86.030, 9.87.010, 9.91.010, 9.91.070–9.91.090, 9.92.010–9.92.060, 9.92.080–9.92.120, 10.01.060, 10.01.110, 10.19.010, 10.37.020, 10.43.010, 10.43.030–10.43.050, 10.46.010, 10.46.050, 10.46.090, 10.52.030, 10.52.060, 10.52.090, 10.58.020, 10.58.040, 10.61.010, 19.60.010–19.60.060, 22.32.010–22.32.050, 26.04.240, 26.28.060, 26.28.070, 36.28.100, 40.16.010–40.16.030, 42.04.040, 42.20.010–42.20.100, 49.44.020–49.44.080, 59.12.230, 66.44.230–66.44.250, 68.08.100, 68.08.110, 68.08.140, 68.24.190, 69.40.030–69.40.050, 70.54.010, 70.54.020, 70.54.050, 70.54.070, 70.54.080, 70.74.270–70.74.300, 71.08.010, 71.08.020, 76.04.220, 81.40.100, 81.48.010, 81.48.020, 81.48.060, 81.56.150, 81.56.160, 81.60.070, 88.08.020, 88.08.030, 88.08.050, 88.08.060.

9.01.130 Sending letter, when complete. Whenever any statute makes the sending of a letter criminal, the offense shall be deemed complete from the time it is deposited in any post office or other place, or delivered to any person, with intent that it shall be forwarded; and the sender may be proceeded against in the county wherein it was so deposited or delivered, or in which it was received by the person to whom it was addressed. [1909 c 249 § 22; RRS § 2274.]

9.01.160 Application to existing civil rights. Nothing in this act shall be deemed to affect any civil right or remedy existing at the time when it shall take effect, by virtue of the common law or of the provision of any statute. [1909 c 249 § 43; RRS § 2295.]

Reviser's note: For "this act," see note following RCW 9.01.120.

9.01.200 Defense of person or property against heinous crime—Reimbursement by state for expenses of defendant. No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself, his family, or his real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of aggravated assault, armed robbery, holdup, rape, murder, or any other heinous crime.

When a substantial question of self defense in such a case shall exist which needs legal investigation or court action for the full determination of the facts, and the defendant's actions are subsequently found justified under the intent of this section, the state of Washington shall indemnify or reimburse such defendant for all loss of time, legal fees, or other expenses involved in his defense. [1977 ex.s. c 206 § 8.]

Use of deadly force—Legislative recognition: See note following RCW 9A.16.040.

Chapter 9.02 ABORTION

Sections	
9.02.005	Transfer of duties to department of social and health services.
9.02.010	Defined.
9.02.020	Pregnant women attempting abortion.
9.02.030	Selling drugs, etc.
9.02.040	Evidence.
9.02.050	Concealing birth.
9.02.060	Lawful termination of pregnancy.
9.02.070	Lawful termination of pregnancy—Requirements—Consent—Ninety day residency—Accredited or approved hospital facility—Penalty.
9.02.080	Lawful termination of pregnancy—Objecting to participation.
9.02.090	Lawful termination of pregnancy—Referral of act to electorate.

Advertising or selling means of abortion: RCW 9.68.030.

Right to medical treatment of infant born alive in the course of an abortion procedure: RCW 18.71.240.

9.02.005 Transfer of duties to department of social and health services. The powers and duties of the state board of health under this chapter shall be performed by the department of social and health services. [1985 c 213 § 3.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

9.02.010 Defined. Every person who, with intent thereby to produce the miscarriage of a woman, unless the same is necessary to preserve her life or that of the child whereof she is pregnant, shall—

(1) Prescribe, supply, or administer to a woman, whether pregnant or not, or advise or cause her to take any medicine, drug or substance; or,

(2) Use, or cause to be used, any instrument or other means;

Shall be guilty of abortion, and punished by imprisonment in the state penitentiary for not more than five years, or in the county jail for not more than one year. [1909 c 249 § 196; Code 1881 § 821; 1873 p 188 § 42; 1869 p 209 § 40; 1854 p 81 § 38; RRS § 2448.]

Killing unborn quick child: RCW 9A.32.060.

9.02.020 Pregnant women attempting abortion. Every pregnant woman who shall take any medicine, drug or substance, or use or submit to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her

life or that of the child whereof she is pregnant, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than one thousand dollars. [1909 c 249 § 197; RRS § 2449.]

9.02.030 Selling drugs, etc. Every person who shall manufacture, sell or give away any instrument, drug, medicine, or other substance, knowing or intending that the same may be unlawfully used in procuring the miscarriage of a woman, shall be guilty of a gross misdemeanor. [1909 c 249 § 198; RRS § 2450.]

Advertising or selling means of abortion: RCW 9.68.030.

9.02.040 Evidence. In any prosecution for abortion, attempting abortion, or selling drugs unlawfully, no person shall be excused from testifying as a witness on the ground that said testimony would tend to incriminate himself. [1909 c 249 § 199; RRS § 2451.]

Incriminating testimony of witness not to be used: RCW 10.52.090.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

9.02.050 Concealing birth. Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a gross misdemeanor. [1909 c 249 § 200; RRS § 2452.]

9.02.060 Lawful termination of pregnancy. Neither the termination by a physician licensed under chapters 18.71 or 18.57 RCW of the pregnancy of a woman not quick with child nor the prescribing, supplying or administering of any medicine, drug or substance to or the use of any instrument or other means on, such woman by a physician so licensed, nor the taking of any medicine, drug or substance or the use or submittal to the use of any instrument or other means by such a woman when following the directions of a physician so licensed, with the intent to terminate such pregnancy, shall be deemed unlawful acts within the meaning of this act. [1970 ex.s. c 3 § 1.]

Severability—1970 ex.s. c 3: "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." [1970 ex.s. c 3 § 4.] This applies to RCW 9.02.060 through 9.02.090.

9.02.070 Lawful termination of pregnancy—Requirements—Consent—Ninety day residency—Accredited or approved hospital facility—Penalty. A pregnancy of a woman not quick with child and not more than four lunar months after conception may be lawfully terminated under RCW 9.02.060 through 9.02.090 only: (a) with her prior consent and, if married and residing with her husband or unmarried and under the age of eighteen years, with the prior consent of her husband or legal guardian, respectively, (b) if the woman has resided in this state for at least ninety days prior to the date of termination, and (c) in a hospital accredited by the Joint Commission on Accreditation of Hospitals or at a medical facility approved for that purpose by the

state board of health, which facility meets standards prescribed by regulations to be issued by the state board of health for the safe and adequate care and treatment of patients: *Provided*, That if a physician determines that termination is immediately necessary to meet the medical emergency the pregnancy may be terminated elsewhere. Any physician who violates this section or any regulation of the state board of health issued under authority of this section shall be guilty of a gross misdemeanor. [1970 ex.s. c 3 § 2.]

9.02.080 Lawful termination of pregnancy—Objecting to participation. No hospital, physician, nurse, hospital employee nor any other person shall be under any duty, by law or contract, nor shall such hospital or person in any circumstances be required, to participate in a termination of pregnancy if such hospital or person objects to such termination. No such person shall be discriminated against in employment or professional privileges because he so objects. [1970 ex.s. c 3 § 3.]

9.02.090 Lawful termination of pregnancy—Referral of act to electorate. *This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November 1970, in accordance with the provisions of section 1, Article II of the Constitution of the state of Washington, as amended, and the laws adopted to facilitate the operation thereof. [1970 ex.s. c 3 § 5.]

Reviser's note: *(1) "This act" [1970 ex.s. c 3] is codified as RCW 9.02.060 through 9.02.090.

(2) RCW 9.02.060 through 9.02.090 was adopted and ratified by the people at the November 3, 1970, general election (Referendum Bill No. 20).

Chapter 9.03

ABANDONED REFRIGERATION EQUIPMENT

Sections	
9.03.010	Abandoning, discarding refrigeration equipment.
9.03.020	Permitting unused equipment to remain on premises.
9.03.030	Violation of RCW 9.03.010 or 9.03.020.
9.03.040	Keeping or storing equipment for sale.

9.03.010 Abandoning, discarding refrigeration equipment. Any person who discards or abandons or leaves in any place accessible to children any refrigerator, icebox, or deep freeze locker having a capacity of one and one-half cubic feet or more, which is no longer in use, and which has not had the door removed or a portion of the latch mechanism removed to prevent latching or locking of the door, is guilty of a misdemeanor. [1955 c 298 § 1.]

9.03.020 Permitting unused equipment to remain on premises. Any owner, lessee, or manager who knowingly permits such an unused refrigerator, icebox, or deep freeze locker to remain on the premises under his control without having the door removed or a portion of the latch mechanism removed to prevent latching or locking of the door is guilty of a misdemeanor. [1955 c 298 § 2.]

9.03.030 Violation of RCW 9.03.010 or 9.03.020. Guilt of a violation of RCW 9.03.010 or 9.03.020 shall not, in itself, render one guilty of manslaughter, battery, or other crime against a person who may suffer death or injury from entrapment in such refrigerator, icebox, or deep freeze locker. [1955 c 298 § 3.]

9.03.040 Keeping or storing equipment for sale. Any person who keeps or stores refrigerators, iceboxes, or deep freeze lockers for the purpose of selling or offering them for sale shall not be guilty of a violation of this chapter if he takes reasonable precautions to effectively secure the door of any refrigerator, icebox, or deep freeze locker held for purpose of sale so as to prevent entrance of children small enough to fit into such articles. [1955 c 298 § 4.]

Chapter 9.04

ADVERTISING, CRIMES RELATING TO

Sections

9.04.010	False advertising.
9.04.040	Advertising cures of lost sexual potency—Evidence.
9.04.050	False, misleading, deceptive advertising.
9.04.060	False, misleading, deceptive advertising—Action to restrain and prevent.
9.04.070	False, misleading, deceptive advertising—Penalty—Other remedies and penalties not applicable.
9.04.080	False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice.
9.04.090	Advertising fuel prices by service stations.

Apple advertising regulations: Chapter 15.24 RCW.

Attaching advertisements to utility poles: RCW 70.54.090, 70.54.100.

Attorneys at law, advertising: Rules of court: Code of Professional Responsibility (CPR)—Canon 2.

Banks and trust companies:

advertising legal services: RCW 30.04.260.

using words indicating: RCW 30.04.020.

Buildings, placing advertising matter on: Chapter 9A.48 RCW.

Charitable solicitations, regulation, application of chapter 9.04 RCW: RCW 19.09.340.

Consumer finance business, false advertising: RCW 31.08.150, 31.08.210.

Contraceptives or means of abortion, advertising: RCW 9.68.030.

Dentistry, advertising restrictions: RCW 18.32.290, 18.32.360.

Drugless healing, advertising restrictions: RCW 18.36.120.

Egg law, advertising violations: Chapter 69.25 RCW.

Elections, advertising violations:

initiative or referendum petition signers: RCW 29.79.490.

recall petition signers: RCW 29.82.220.

Employment agencies, false advertising: Chapter 19.31 RCW.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Hearing aid dispensing, advertising, etc.—Application: RCW 18.35.180.

Indecent articles: RCW 9.68.030.

Insurance, unlawful advertising practices: Chapter 48.30 RCW.

Oleomargarine advertising: RCW 15.40.030, 15.40.050.

Optometry advertising: RCW 18.53.140, 18.53.150.

State parks, advertising prohibited: RCW 43.51.180.

9.04.010 False advertising. Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or

distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor: *Provided*, That the provisions of this section shall not apply to any owner, publisher, agent, or employee of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof. [1913 c 34 § 1; RRS § 2622-1.]

9.04.040 Advertising cures of lost sexual potency—Evidence. Any advertisement in any newspaper, periodical, pamphlet, circular or other written or printed paper, containing the words, "lost manhood", "lost vitality", "lost vigor", "monthly regulators for women", or words synonymous therewith, shall be prima facie evidence of intent to violate *RCW 9.04.030 and 9.04.040 by the person or persons so advertising, or causing to be advertised, or publishing or permitting to be published, or distributing, circulating and displaying or causing to be distributed, circulated or displayed, any such advertisement. [1921 c 168 § 2; RRS § 2462-1.]

*Reviser's note: RCW 9.04.030 was repealed by 1987 c 456 § 32.

9.04.050 False, misleading, deceptive advertising. It shall be unlawful for any person to publish, disseminate or display, or cause directly or indirectly, to be published, disseminated or displayed in any manner or by any means, including solicitation or dissemination by mail, telephone or door-to-door contacts, any false, deceptive or misleading advertising, with knowledge of the facts which render the advertising false, deceptive or misleading, for any business, trade or commercial purpose or for the purpose of inducing, or which is likely to induce, directly or indirectly, the public to purchase, consume, lease, dispose of, utilize or sell any property or service, or to enter into any obligation or transaction relating thereto: *Provided*, That nothing in this section shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, such advertising in good faith without knowledge of its false, deceptive or misleading character. [1961 c 189 § 1.]

Severability—1961 c 189: "If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall

not be affected thereby." [1961 c 189 § 5.] This applies to RCW 9.04.050 through 9.04.080.

Blind made products, false advertising: RCW 19.06.030, 19.06.040.

Highway advertising control act of 1961, Scenic Vistas Act of 1971: Chapter 47.42 RCW.

9.04.060 False, misleading, deceptive advertising—Action to restrain and prevent. The attorney general or the prosecuting attorneys of the several counties may bring an action in the superior court to restrain and prevent any person from violating any provision of RCW 9.04.050 through 9.04.080. [1961 c 189 § 2.]

9.04.070 False, misleading, deceptive advertising—Penalty—Other remedies and penalties not applicable. Any person who violates any order or injunction issued pursuant to RCW 9.04.050 through 9.04.080 shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both.

*RCW 9.01.090 shall not be applicable to the terms of RCW 9.04.050 through 9.04.080 and no penalty or remedy shall result from a violation of RCW 9.04.050 through 9.04.080 except as expressly provided herein. [1961 c 189 § 3.]

*Reviser's note: RCW 9.01.090 was repealed by 1975 1st ex.s. c 260 § 9A.92.010.

9.04.080 False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice. In the enforcement of RCW 9.04.050 through 9.04.080 the official enforcing RCW 9.04.050 through 9.04.080 may accept an assurance of discontinuance of any act or practice deemed in violation of RCW 9.04.050 through 9.04.080, from any person engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. A violation of such assurance shall constitute prima facie proof of a violation of RCW 9.04.050 through 9.04.080: *Provided*, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [1961 c 189 § 4.]

9.04.090 Advertising fuel prices by service stations. It is unlawful for any dealer or service station, as both are defined in RCW 82.36.010, to advertise by publication, dissemination, display, or whatever means:

(1) A price per unit of fuel that is expressed in a unit of measurement different from that employed by the pump or other device used to dispense the fuel, unless the price is advertised for both units of measurement in the same fashion; or

(2) A price per unit of fuel that is conditioned upon the purchase of another product, unless the conditional language, name, and price of the other product are clearly expressed in the advertisement in characters at least one-half the height of the characters used to advertise the fuel price.

Violation of this section is a misdemeanor and is subject to the provisions of RCW 9.04.060 through 9.04.080. [1983 c 114 § 1.]

Chapter 9.05

ANARCHY AND SABOTAGE

Sections

9.05.010	Criminal anarchy defined.
9.05.020	Advocating criminal anarchy—Penalty.
9.05.030	Assemblages of anarchists.
9.05.040	Permitting premises to be used for assemblages of anarchists.
9.05.050	Evidence—Self-incrimination.
9.05.060	Sabotage defined—Penalty.
9.05.070	Interference with owner's control.
9.05.080	Penalty for advocating sabotage.
9.05.090	Provisions cumulative.
9.05.100	Displaying emblems of seditious and anarchistic groups.
9.05.110	Possession of emblems unlawful.
9.05.120	Penalty.
9.05.130	Searches and seizures.
9.05.140	Exceptions.
9.05.150	Publishing matter inciting breach of peace.
9.05.160	Liability of editors and others.

Subversive activities act: Chapter 9.81 RCW.

Treason: Chapter 9.82 RCW.

9.05.010 Criminal anarchy defined. Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocating of such doctrine either by word of mouth, by writing, by radio, or by printing is a felony. [1941 c 215 § 1; 1909 c 249 § 310; 1903 c 45 § 1; Rem. Supp. 1941 § 2562.]

Defamation, radio broadcasting: Chapter 19.64 RCW.

9.05.020 Advocating criminal anarchy—Penalty. Every person who

(1) By word of mouth, by writing, by radio, or by printing shall advocate, advise or teach the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or,

(2) Shall print, publish, edit, issue or knowingly circulate, sell, distribute or publicly display any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or,

(3) Shall openly, wilfully and deliberately justify by word of mouth, by writing, by radio or by printing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of any civilized nation having an organized government because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or,

(4) Shall organize or help to organize or become a member of or voluntarily assemble with any society,

group or assembly of persons formed to teach or advocate such doctrine,

Shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

No person convicted of violating any of the provisions of RCW 9.05.010 or 9.05.020 shall be an employee of the state, or any department, agency, or subdivision thereof during the five years next following his conviction. [1941 c 215 § 2; 1909 c 249 § 311; 1903 c 45 § 2; Rem. Supp. 1941 § 2563.]

9.05.030 Assemblages of anarchists. Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in RCW 9.05.010, such an assembly is unlawful, and every person voluntarily participating therein by his presence, aid or instigation, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or both. [1909 c 249 § 314; 1903 c 45 § 4; RRS § 2566.]

9.05.040 Permitting premises to be used for assemblages of anarchists. Every owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room, who shall wilfully and knowingly permit therein any assemblage of persons prohibited by RCW 9.05.030, or who, after notification that the premises are so used, shall permit such use to be continued, shall be guilty of a gross misdemeanor. [1909 c 249 § 315; RRS § 2567.]

9.05.050 Evidence—Self-incrimination. No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in RCW 9.05.020 or 9.05.030, upon the ground that the evidence might tend to criminate himself. [1909 c 249 § 316; RRS § 2568.]

Reviser's note: Caption for 1909 c 249 § 316 reads as follows: "Sec. 316. Witness' Privilege."

Incriminating testimony not to be used: RCW 10.52.090.

Rights of accused persons: State Constitution Art. 1 § 9.

9.05.060 Sabotage defined—Penalty. Whoever, with intent that his act shall, or with reason to believe that it may, injure, interfere with, or obstruct any agricultural, stockraising, lumbering, mining, quarrying, fishing, manufacturing, transportation, mercantile or building enterprise wherein persons are employed for wage, shall wilfully injure or destroy, or attempt or threaten to injure or destroy, any property whatsoever, or shall wilfully derange, or attempt or threaten to derange, any mechanism or appliance, shall be guilty of a felony. [1919 c 173 § 1; RRS § 2563-3.]

Endangering life by breach of labor contract: RCW 49.44.080.

Excessive steam in boilers: RCW 70.54.080.

Malicious injury to railroad property: RCW 81.60.070.

Malicious mischief—Injury to property: Chapter 9A.48 RCW.

Sabotaging rolling stock: RCW 81.60.080.

9.05.070 Interference with owner's control. Whoever, with intent to supplant, nullify or impair the owner's management or control of any enterprise described in RCW 9.05.060, shall unlawfully take or retain, or attempt or threaten unlawfully to take or retain, possession or control of any property or instrumentality used in such enterprise, shall be guilty of a felony. [1919 c 173 § 2; RRS § 2563-4.]

9.05.080 Penalty for advocating sabotage. Whoever shall

(1) Advocate, advise or teach the necessity, duty, propriety or expediency of doing or practicing any of the acts made unlawful by RCW 9.05.060 or 9.05.070, or

(2) Print, publish, edit, issue or knowingly sell, circulate, distribute or display any book, pamphlet, paper, hand-bill, document or written or printed matter of any form, advocating, advising or teaching such necessity, duty, propriety or expediency, or

(3) By word of mouth or writing justify any act or conduct with intent to advocate, advise or teach such necessity, duty, propriety or expediency, or

(4) Organize or help to organize, give aid to, be a member of or voluntarily assemble with, any group of persons formed to advocate, advise or teach such necessity, duty, propriety or expediency,

Shall be guilty of a felony. [1919 c 173 § 3; RRS § 2563-5.]

9.05.090 Provisions cumulative. RCW 9.05.060 through 9.05.080 shall not be construed to repeal or amend any existing penal statute. [1919 c 173 § 4; RRS § 2563-6.]

9.05.100 Displaying emblems of seditious and anarchistic groups. No flag, banner, standard, insignia, badge, emblem, sign or other device of, or suggestive of, any organized or unorganized group of persons who, by their laws, rules, declarations, doctrines, creeds, purposes, practices or efforts, espouse, propose or advocate any theory, principle or form of government antagonistic to, or subversive of, the Constitution, its mandates, or laws of the United States or of this state, shall be displayed in this state. [1919 c 181 § 1; RRS § 2563-7.]

9.05.110 Possession of emblems unlawful. The ownership or possession of any article or thing, the display of which is forbidden by RCW 9.05.100 through 9.05.140, shall be unlawful. [1919 c 181 § 2; RRS § 2563-8.]

9.05.120 Penalty. Any person who violates RCW 9.05.100 through 9.05.140 shall be guilty of a felony. An officer, trustee, director, agent or employee of a corporation or association who participates in the doing, or assists or acts for the corporation or association in the doing, of anything prohibited by RCW 9.05.100 through 9.05.140, shall be guilty of a felony. [1919 c 181 § 3; RRS § 2563-9.]

9.05.130 Searches and seizures. Every article or thing owned or kept in violation of RCW 9.05.100 through 9.05.140 is hereby declared to be pernicious and

dangerous to the public welfare and subject to be searched for, seized, forfeited and destroyed. [1919 c 181 § 4; RRS § 2563–10.]

9.05.140 Exceptions. Nothing in RCW 9.05.100 through 9.05.140 shall apply to the ownership, possession or display of flags, banners, standards, insignia, badges or emblems of any nation having accredited representatives in the United States or in its territories or possessions; nor shall RCW 9.05.100 through 9.05.140 apply to historical museums of recognized standing. [1919 c 181 § 5; RRS § 2563–11.]

9.05.150 Publishing matter inciting breach of peace. Every person who shall wilfully print, publish, edit, issue, or knowingly circulate, sell, distribute or display any book, paper, document or written or printed matter, in any form, advocating, encouraging or inciting, or having a tendency to encourage or incite the commission of any crime, breach of the peace or act of violence, or which shall tend to encourage or advocate disrespect for law or for any court or courts of justice, shall be guilty of a gross misdemeanor. [1909 c 249 § 312; RRS § 2564.]

Defamation, radio broadcasting: Chapter 19.64 RCW.

9.05.160 Liability of editors and others. Every editor or proprietor of a book, newspaper or serial and every manager of a partnership or incorporated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor, the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make the publication, and was retracted by him as soon as known. [1909 c 249 § 313; 1905 c 45 § 3; RRS § 2565.]

Chapter 9.08

ANIMALS, CRIMES RELATING TO

Sections

9.08.020	Diseased animals.
9.08.030	False certificate of registration of animals—False representation as to breed.
9.08.070	Dogs—Taking, concealing, injuring, killing, etc.—Penalty.

Brands and fences: Title 16 RCW.

Brands and marks, generally: Chapter 9.16 RCW.

Bulls running at large: Chapter 16.20 RCW.

County dog license tax: Chapter 36.49 RCW, RCW 36.49.070.

Cruelty to

animals, generally: Chapter 16.52 RCW.

stock in transit: RCW 81.56.120.

Destroying animals in state parks: RCW 43.51.180.

Disposal of dead animals: Chapter 16.68 RCW.

Dogs, dangerous: Chapter 16.08 RCW.

Estrays, cattle, horses, and mules: RCW 16.28.160.

Game code: Title 77 RCW.

Goats running at large: RCW 16.12.100.

Horses, mules, and asses running at large: Chapter 16.13 RCW.

Livestock, removal from common range: RCW 16.28.170.

Quarantine of diseased domestic animals: Chapter 16.36 RCW.

Sheep

disease control: Chapter 16.44 RCW, RCW 16.44.180.

running at large: RCW 16.12.100.

Sufficiency of indictment or information in crimes involving animals: RCW 10.37.070.

Swine running at large: RCW 16.12.010.

Transporting in unsafe manner: RCW 16.52.080.

9.08.020 Diseased animals. Every owner or person having charge thereof, who shall import or drive into this state, or who shall turn out or suffer to run at large upon any highway or unenclosed lands, or upon any lands adjoining the enclosed lands kept by any person for pasture; or who shall keep or allow to be kept in any barn with other animals, or water or allow to be watered at any public drinking fountain or watering place, any animal having any contagious or infectious disease; or who shall sell, let or dispose of any such animal knowing it to be so diseased, without first apprising the purchaser or person taking it of the existence of such disease, shall be guilty of a misdemeanor. [1909 c 249 § 288; Code 1881 § 923; RRS § 2540.]

Exposure to contagious diseases, penalty: RCW 70.54.050.

Nuisance: Chapters 7.48, 9.66 RCW.

Pollution of drinking water or watershed: Chapter 35.88 RCW, RCW 70.54.010, 70.54.030.

Quarantine of diseased domestic animals: Chapter 16.36 RCW.

Sheep disease control: Chapter 16.44 RCW, RCW 16.44.180.

9.08.030 False certificate of registration of animals—False representation as to breed. Every person who, by color or aid of any false pretense, representation, token or writing shall obtain from any club, association, society or company for the improvement of the breed of cattle, horses, sheep, swine, fowls or other domestic animals or birds, a certificate of registration of any animal or bird in a herdbook, or other register of any such association, society or company, or a transfer of any such registration, and every person who shall knowingly represent an animal or bird for breeding purposes to be of a greater degree of any particular strain of blood than such animal actually possesses, shall be guilty of a gross misdemeanor. [1909 c 249 § 341; RRS § 2593.]

9.08.070 Dogs—Taking, concealing, injuring, killing, etc.—Penalty. Any person who, with intent to deprive or defraud the owner thereof, does any of the following shall be guilty of a gross misdemeanor:

(1) Takes, leads away, confines, secretes or converts any dog, except in cases in which the value of the dog exceeds two hundred fifty dollars;

(2) Conceals the identity of any dog or its owner by obscuring or removing from the dog any collar, tag, license, tattoo, or other identifying device or mark; or

(3) Wilfully kills or injures any dog, unless excused by law.

Such violations shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. [1982 c 114 § 1.]

Chapter 9.12 BARRATRY

Sections

9.12.010	Barratry.
9.12.020	Buying, demanding, or promising reward by district judge or deputy.

9.12.010 Barratry. Every person who shall bring on his own behalf, or instigate, incite or encourage another to bring, any false suit at law or in equity in any court of this state, with intent thereby to distress or harass a defendant therein; and every person, being an attorney or counselor at law, who shall personally, or through the agency of another, solicit employment as such attorney, in any suit pending or prospective, or, with intent to obtain such employment shall, directly or indirectly, loan any money or give or promise to give any money, property or other consideration to the person from whom such employment is sought; and every person who shall serve or send any paper or document purporting to be or resembling a judicial process, not in fact a judicial process shall be guilty of a misdemeanor; and in case the person offending is an attorney, he may, in addition thereto be disbarred from practicing law within this state. [1915 c 165 § 1; 1909 c 249 § 118; Code 1881 § 901; 1873 p 204 § 100; 1854 p 92 § 91; RRS § 2370.]

Attorneys at law: Chapter 2.44 RCW.

State bar act: Chapter 2.48 RCW.

9.12.020 Buying, demanding, or promising reward by district judge or deputy. Every district judge or deputy who shall, directly or indirectly, buy or be interested in buying anything in action for the purpose of commencing a suit thereon before a district judge, or who shall give or promise any valuable consideration to any person as an inducement to bring, or as a consideration for having brought, a suit before a district judge, shall be guilty of a misdemeanor. [1987 c 202 § 138; 1909 c 249 § 119; RRS § 2371.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 9.16

BRANDS AND MARKS, CRIMES RELATING TO

Sections

9.16.010	Removing lawful brands.
9.16.020	Imitating lawful brand.
9.16.030	Counterfeiting trademark, brand, etc.
9.16.040	Displaying goods with false trademark.
9.16.050	When deemed affixed.
9.16.060	Fraudulent registration of trademark.
9.16.070	Form and similitude defined.
9.16.080	Sales of petroleum products improperly labeled or by wrong grade.
9.16.090	Sales of petroleum products improperly labeled or by wrong grade—Penalty for violations.
9.16.100	Use of the words "sterling silver," etc.
9.16.110	Use of words "coin silver," etc.
9.16.120	Use of the word "sterling," on mounting.
9.16.130	Use of the words "coin silver," on mounting.
9.16.140	Unlawfully marking article made of gold.
9.16.150	"Marked, stamped or branded," defined.

Animals, estrays, brands, and fences: Title 16 RCW.

Defacement of motor serial numbers: RCW 9A.56.180.

Egg law: Chapter 69.25 RCW.

Fertilizers, minerals, and limes, brand alteration, etc.: Chapter 15.54 RCW.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Forest products, marks and brands: Chapter 76.36 RCW.

Honey act, misbranding, etc.: Chapter 69.28 RCW.

Livestock remedies, brand alteration, etc.: Chapter 15.52 RCW.

Log patrols: Chapter 76.40 RCW.

Macaroni products, misbranding: RCW 69.16.160, 69.16.170.

Poisons, misbranding: Chapters 69.36, 69.40 RCW.

Trademark registration: Chapters 19.76, 19.77 RCW.

Watches, removal of serial number: Chapter 19.60 RCW.

Weights and measures: Chapter 19.92 RCW.

9.16.010 Removing lawful brands. Every person who shall wilfully deface, obliterate, remove or alter any mark or brand placed by or with the authority of the owner thereof on any shingle bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [1909 c 249 § 342; Code 1881 § 839; 1873 p 191 § 54; RRS § 2594.]

Forest product brands and marks, falsifying, etc.: RCW 76.36.110, 76.36.120.

9.16.020 Imitating lawful brand. Every person who, in any county, shall place upon any property, any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof as a brand or mark for the designation or identification of a like kind of property, shall—

(1) If done with intent to confuse or commingle such property with, or to appropriate to his own use, the property of such other owner, be guilty of a felony, and be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment; or

(2) If done without such intent, shall be guilty of a misdemeanor. [1909 c 249 § 343; RRS § 2595.]

9.16.030 Counterfeiting trademark, brand, etc. Every person who shall use or display or have in his possession with intent to use or display, the genuine label, trademark, term, design, device, or form of advertisement of any person, corporation, association or union, lawfully filed for record in the office of the secretary of state, or the exclusive right to use which is guaranteed to any person, corporation, association or union, by the laws of the United States, without the written authority of such person, corporation, association or union, or who shall wilfully forge or counterfeit or use or display or have in his possession with intent to use or display any representation, likeness, similitude, copy or imitation of any genuine label, trademark, term, design, device, or form of advertisement, so filed or protected, or any die, plate,

stamp or other device for manufacturing the same, shall be guilty of a gross misdemeanor. [1909 c 249 § 344; Code 1881 § 854; 1873 p 194 § 63; 1854 p 85 § 87; RRS § 2596.]

9.16.040 Displaying goods with false trademark. Every person who shall knowingly sell, display or advertise, or have in his possession with intent to sell, any goods, wares, merchandise, mixture, preparation or compound having affixed thereto any label, trademark, term, design, device, or form of advertisement lawfully filed for record in the office of the secretary of state by any person, corporation, association or union, or the exclusive right to the use of which is guaranteed to such person, corporation, association or union under the laws of the United States, which label, trademark, term, design, device or form of advertisement shall have been used or affixed thereto without the written authority of such person, corporation, association or union, or having affixed thereto any forged or counterfeit representation, likeness, similitude, copy or imitation thereof, shall be guilty of a misdemeanor. [1909 c 249 § 345; RRS § 2597.]

Trademark registration: Chapter 19.77 RCW.

9.16.050 When deemed affixed. A label, trademark, term, design, device or form of advertisement shall be deemed to be affixed to any goods, wares, merchandise, mixture, preparation or compound whenever it is in any manner placed in or upon either the article itself, or the box, bale, barrel, bottle, case, cask or other vessel or package, or the cover, wrapper, stopper, brand, label or other thing in, by or with which the goods are packed, enclosed or otherwise prepared for sale or distribution. [1909 c 249 § 346; RRS § 2598.]

9.16.060 Fraudulent registration of trademark. Every person who shall for himself, or on behalf of any other person, corporation, association or union, procure the filing of any label, trademark, term, design, device or form of advertisement, with the secretary of state by any fraudulent means, shall be guilty of a misdemeanor. [1909 c 249 § 347; RRS § 2599.]

Trademark registration: Chapter 19.77 RCW.

9.16.070 Form and similitude defined. A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. [1909 c 249 § 348; RRS § 2600.]

9.16.080 Sales of petroleum products improperly labeled or by wrong grade. It shall be unlawful for any person, firm or corporation:

(1) To use, adopt, place upon, or permit to be used, adopted or placed upon, any barrel, tank, drum or other container of gasoline or lubricating oil for internal combustion engines, sold or offered for sale, or upon any pump or other device used in delivering the same, any trade name, trademark, designation or other descriptive

matter, which is not the true and correct trade name, trademark, designation or other descriptive matter of the gasoline or lubricating oil so sold or offered for sale;

(2) To sell, or offer for sale, or have in his or its possession with intent to sell, any gasoline or lubricating oil, contained in, or taken from, or through any barrel, tank, drum, or other container or pump or other device, so unlawfully labeled or marked, as hereinabove provided;

(3) To sell, or offer for sale, or have in his or its possession with intent to sell any gasoline or lubricating oil for internal combustion engines and to represent to the purchaser, or prospective purchaser, that such gasoline or lubricating oil so sold or offered for sale, is of a quality, grade or standard, or the product of a particular gasoline or lubricating oil manufacturing, refining or distributing company or association, other than the true quality, grade, standard, or the product of a particular gasoline or oil manufacturing, refining or distributing company or association, of the gasoline or oil so offered for sale or sold. [1927 c 222 § 1; RRS § 2637-1.]

9.16.090 Sales of petroleum products improperly labeled or by wrong grade—Penalty for violations. Any person, firm or corporation, violating any of the provisions of RCW 9.16.080 shall be guilty of a misdemeanor, and for a second, and each subsequent, violation of any provision of RCW 9.16.080 shall be guilty of a gross misdemeanor. [1927 c 222 § 2; RRS § 2637-2.]

9.16.100 Use of the words "sterling silver," etc. Every person who shall make, sell or offer to sell or dispose of, or have in his possession with intent to sell or dispose of any metal article marked, stamped or branded with the words "sterling," "sterling silver," or "solid silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured is pure silver, shall be guilty of a gross misdemeanor. [1909 c 249 § 428; RRS § 2680.]

9.16.110 Use of words "coin silver," etc. Every person who shall make, sell or offer to sell or dispose of, or have in his possession with intent to dispose of any metal article marked, stamped or branded with the words "coin," or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured, is pure silver, shall be guilty of a gross misdemeanor. [1909 c 249 § 429; RRS § 2681.]

9.16.120 Use of the word "sterling," on mounting. Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling," or "sterling silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver,

shall be guilty of a gross misdemeanor. [1909 c 249 § 430; RRS § 2682.]

9.16.130 Use of the words "coin silver," on mounting. Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [1909 c 249 § 431; RRS § 2683.]

9.16.140 Unlawfully marking article made of gold. Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article constructed wholly or in part of gold, or of an alloy of gold, and marked, stamped or branded in such manner as to indicate that the gold or alloy of gold in such article is of a greater degree or carat of fineness, by more than one carat, than the actual carat or fineness of such gold or alloy of gold, shall be guilty of a gross misdemeanor. [1909 c 249 § 432; RRS § 2684.]

9.16.150 "Marked, stamped or branded," defined. An article shall be deemed to be "marked, stamped or branded" whenever such article, or any box, package, cover or wrapper in which the same is enclosed, encased or prepared for sale or delivery, or any card, label or placard with which the same may be exhibited or displayed, is so marked, stamped or branded. [1909 c 249 § 433; RRS § 2685.]

Chapter 9.18

BIDDING OFFENSES—BRIBERY OR CORRUPTION—OFFENDER AS WITNESS (Formerly: Bribery and grafting)

Sections

9.18.080	Offender a competent witness.
9.18.120	Suppression of competitive bidding.
9.18.130	Collusion to prevent competitive bidding.
9.18.140	Penalty.
9.18.150	Agreements outside state.

Banks and trust companies, misconduct by employees: RCW 30.12-.050, 30.12.110.

Baseball, bribery and illegal practices: Chapter 67.04 RCW.

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Cities and towns, commission form, misconduct of officers and employees: RCW 35.17.150.

County commissioners, misconduct relating to inventories: RCW 36.32.220.

County officers, misconduct: RCW 36.18.160, 36.18.170.

Elections, bribery or coercion: Chapter 29.85 RCW.

Employees, corrupt influencing, grafting by: RCW 49.44.060, 49.44.070.

Industrial loan companies, misconduct of employees: RCW 31.04.220.

Insurance, fraud and unfair practices: Chapter 48.30 RCW.

Labor representative bribery: RCW 49.44.020, 49.44.030.

Misconduct in signing a petition: RCW 9.44.080.

Public officers, misconduct: Chapter 42.20 RCW.

School officials, grafting: RCW 28A.87.090.

Wages, rebating by employers: RCW 49.52.050, 49.52.090.

9.18.080 Offender a competent witness. Every person offending against any of the provisions of law relating to bribery or corruption shall be a competent witness against another so offending and shall not be excused from giving testimony tending to criminate himself. [1909 c 249 § 78; RRS § 2330. Cf. 1907 c 60 §§ 1, 2; RRS §§ 2149, 2150.]

Bribery and corruption: Chapter 9A.68 RCW.

Incriminating testimony not to be used: RCW 10.52.090.

Rights of accused persons: State Constitution Art. 1 § 9.

9.18.120 Suppression of competitive bidding. When any competitive bid or bids are to be or have been solicited, requested, or advertised for by the state of Washington, or any county, city, town or other municipal corporation therein, or any department of either thereof, for any work or improvement to be done or constructed for or by such state, county, city, town, or other municipal corporation, or any department of either thereof, it shall be unlawful for any person acting for himself or as agent of another, or as agent for or as a member of any partnership, unincorporated firm or association, or as an officer or agent of any corporation, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another or to any firm, association, or corporation for the purpose of inducing such other person, firm, association, or corporation, either to refrain from submitting any bids upon such public work or improvement, or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept, or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he individually or as an agent or officer of another person, persons, or corporation, will refrain from bidding upon such public work or improvement, or that he will on behalf of himself or such others submit or permit another to submit for him any bid upon such public work or improvement in such sum as to eliminate full and unrestricted competition thereon. [1921 c 12 § 1; RRS § 2333-1.]

9.18.130 Collusion to prevent competitive bidding. It shall be unlawful for any person for himself or as an agent or officer of any other person, persons, or corporation to in any manner enter into collusion or an understanding with any other person, persons, or corporation to prevent or eliminate full and unrestricted competition upon any public work or improvement mentioned in RCW 9.18.120. [1921 c 12 § 2; RRS § 2333-2.]

9.18.140 Penalty. Any person violating any provisions of RCW 9.18.120 through 9.18.150 shall be guilty of a gross misdemeanor. [1921 c 12 § 3; RRS § 2333-3.]

9.18.150 Agreements outside state. It shall be no defense to a prosecution under RCW 9.18.120 through 9.18.150 that a payment or promise of payment of any money, check, draft, or anything of value, or any other understanding or arrangement to eliminate unrestricted competitive bids was had or made outside of the state of Washington, if such work or improvement for which bids are called is to be done or performed within the state. [1921 c 12 § 4; RRS § 2333-4.]

Chapter 9.23 CONTEMPT

Sections
9.23.010 Criminal contempt.

9.23.010 Criminal contempt. Every person who shall commit a contempt of court of any one of the following kinds shall be guilty of a misdemeanor:

(1) Disorderly, contemptuous or insolent behavior committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority; or,

(2) Behavior of like character in the presence of a referee, while actually engaged in a trial or hearing pursuant to an order of court, or in the presence of a jury while actually sitting in the trial of a cause or upon an inquest or other proceeding authorized by law; or,

(3) Breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of a court, jury or referee; or,

(4) Wilful disobedience to the lawful process or mandate of a court; or,

(5) Resistance, wilfully offered, to its lawful process or mandate; or,

(6) Contumacious and unlawful refusal to be sworn as a witness or, after being sworn, to answer any legal and proper interrogatory; or,

(7) Publication of a false or grossly inaccurate report of its proceedings; or,

(8) Assuming to be an attorney or officer of a court or acting as such without authority. [1909 c 249 § 120; Code 1881 § 725; 1869 p 167 § 667; RRS § 2372.]

Contempts: Chapter 7.20 RCW.

Criminal act constituting contempt may be punished separately: RCW 9.92.040.

Power of courts and judicial officers to punish for contempt: RCW 2.28.020, 2.28.070.

Publishing matter inciting disrespect for courts: RCW 9.05.150.

Witnesses, failure to attend as contempt: RCW 5.56.061 through 5.56.080.

Chapter 9.24 CORPORATIONS, CRIMES RELATING TO

Sections
9.24.010 Fraud in stock subscription.
9.24.020 Fraudulent issue of stock, scrip, etc.
9.24.030 Insolvent bank receiving deposit.
9.24.040 Corporation doing business without license.

9.24.050 False report of corporation.
9.24.060 Warehouseman or carrier refusing to issue receipt.
9.24.070 Fictitious bill of lading or receipt.
9.24.080 Warehouseman or carrier fraudulently mixing goods.
9.24.090 Duplicate receipt.
9.24.100 Bill of lading or receipt must be canceled on redelivery of property.
9.24.110 Regulating sale of passage tickets.
9.24.120 Redemption of unused passage ticket.
9.24.125 Filing false statements—Penalty.

Agricultural cooperative associations: Chapter 24.32 RCW.

Banks and trust companies, penalties: RCW 30.04.020, 30.04.050, 30.04.060, 30.04.230, 30.04.240, 30.04.260, 30.04.310, 30.12.090 through 30.12.120, 30.12.190, 30.16.010, 30.44.110, 30.44.120.

Business corporations: Title 23A RCW.

Child labor: RCW 26.28.060, 26.28.070, chapter 49.12 RCW.

Conspiracy, forfeiture of right to do business: RCW 9A.08.030, 9A.28.040.

Consumer finance business, penalties: RCW 31.08.210.

Corporations, criminal process against: Chapter 10.01 RCW.

Credit unions, penalties: Chapter 31.12 RCW.

Crop credit associations, penalties: RCW 31.16.320.

Discrimination in employment: Chapter 49.60 RCW.

Fraud: Chapter 9A.60 RCW.

Hours of labor: Chapter 49.28 RCW.

Industrial loan companies, penalties: RCW 31.04.220, 31.04.250.

Industrial welfare: Chapter 49.12 RCW.

Insurance companies, penalties: RCW 48.01.080, 48.06.190, 48.07.060, 48.08.040, 48.08.050, 48.09.340, 48.17.480, 48.18.180, 48.30.110, 48.30.190, 48.30.210 through 48.30.230, 48.44.060.

Labor

conditions of: Chapter 49.12 RCW.

prohibited practices: Chapter 49.44 RCW.

Legal services, advertising of—Penalty: RCW 30.04.260.

Minors, wages, working conditions, permits: RCW 49.12.121, 49.12.123.

Mutual savings banks, penalties: RCW 32.04.100 through 32.04.130, 32.24.080.

Public service companies: Title 80 RCW.

Railroad rolling stock, penalties: RCW 81.60.080, 81.60.090.

Savings and loan associations, prohibited acts: Chapter 33.36 RCW.

Trading stamps, penalties: RCW 19.84.040.

Transportation companies: Title 81 RCW.

Unemployment compensation, penalties: Chapter 50.36 RCW.

Uniform Fraudulent Conveyance Act: Chapter 19.40 RCW.

Wages—Payment—Collection: Chapter 49.48 RCW.

Workmen's compensation, penalties: RCW 51.16.140, chapter 51.48 RCW.

9.24.010 Fraud in stock subscription. Every person who shall sign the name of a fictitious person to any subscription for or any agreement to take stock in any corporation existing or proposed, and every person who shall sign to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or upon any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, shall be guilty of a gross misdemeanor. [1909 c 249 § 386; RRS § 2638. Formerly RCW 9.44.090.]

9.24.020 Fraudulent issue of stock, scrip, etc. Every officer, agent or other person in the service of a joint stock company or corporation, domestic or foreign, who, wilfully and knowingly with intent to defraud, shall—

(1) Sell, pledge or issue or cause to be sold, pledged or issued, or sign or execute or cause to be signed or executed, with intent to sell, pledge or issue, or cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of ownership of any share or shares of such company or corporation, or any conveyance or encumbrance of real or personal property, contract, bond, or evidence of debt, or writing purporting to be a conveyance or encumbrance of real or personal property, contract, bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which such company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

(2) Reissue, sell, pledge or dispose of, or cause to be reissued, sold, pledged or disposed of, any surrendered or canceled certificate or other evidence of the transfer of ownership of any such share or shares:

Shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1909 c 249 § 387; RRS § 2639. Formerly RCW 9.37.070.]

9.24.030 Insolvent bank receiving deposit. Every owner, officer, stockholder, agent or employee of any person, firm, corporation or association engaged, wholly or in part, in the business of banking or receiving money or negotiable paper or securities on deposit or in trust, who shall accept or receive, with or without interest, any deposit, or who shall consent thereto or connive thereat, when he knows or has good reason to believe that such person, firm, corporation or association is unsafe or insolvent, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than ten thousand dollars. [1909 c 249 § 388; 1893 c 111 § 1; RRS § 2640. Formerly RCW 9.45.140.]

Application to mutual savings banks: RCW 32.04.120.

Receiving deposits by bank after insolvency: State Constitution Art. 12 § 12, RCW 30.44.120.

9.24.040 Corporation doing business without license. Every corporation, whether domestic or foreign, and every person representing or pretending to represent such corporation as an officer, agent or employee thereof, who shall transact, solicit or advertise for any business in this state, before such corporation shall have obtained from the officer lawfully authorized to issue the same, a certificate that such corporation is authorized to transact business in this state, shall be guilty of a gross misdemeanor. [1909 c 249 § 389; RRS § 2641. Formerly RCW 9.45.130.]

Application to mutual savings banks: RCW 32.04.120.

9.24.050 False report of corporation. Every director, officer or agent of any corporation or joint stock association, and every person engaged in organizing or promoting any enterprise, who shall knowingly make or

publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars. [1909 c 249 § 390; RRS § 2642. Formerly RCW 9.38.040.]

Application to mutual savings banks: RCW 32.04.120.

9.24.060 Warehouseman or carrier refusing to issue receipt. See RCW 22.32.010.

9.24.070 Fictitious bill of lading or receipt. See RCW 22.32.020.

9.24.080 Warehouseman or carrier fraudulently mixing goods. See RCW 22.32.030.

9.24.090 Duplicate receipt. See RCW 22.32.040.

9.24.100 Bill of lading or receipt must be canceled on redelivery of property. See RCW 22.32.050.

9.24.110 Regulating sale of passage tickets. See RCW 81.56.150.

9.24.120 Redemption of unused passage ticket. See RCW 81.56.160.

9.24.125 Filing false statements—Penalty. See RCW 43.07.210.

Chapter 9.26A

CREDIT CARDS, CRIMES RELATING TO

Sections

9.26A.090 Telephone company credit cards—Publishing number or code—"Publishes" defined.

9.26A.090 Telephone company credit cards—Publishing number or code—"Publishes" defined. Every person who publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone company credit card, or the numbering or coding which is employed in the issuance of telephone company credit cards, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful charge, shall be guilty of a gross misdemeanor. As used in this section, "publishes" means the communication or dissemination of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book. [1974 ex.s. c 160 § 1.]

Fraud in obtaining telephone or telegraph service: RCW 9.45.240.

Chapter 9.27 INTERFERENCE WITH COURT

Sections

9.27.015 Interference, obstruction of any court, building, or residence—Violations.

Disturbing school or school meeting: RCW 28A.87.060.

9.27.015 Interference, obstruction of any court, building, or residence—Violations. Whoever, interfering with, obstructing, or impeding the administration of justice, pickets or parades in or near a building housing a court of the state of Washington or any political subdivision thereof, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be guilty of a gross misdemeanor.

Nothing in this section shall interfere with or prevent the exercise by any court of the state of Washington or any political subdivision thereof of its power to punish for contempt. [1971 ex.s. c 302 § 16.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.31 ESCAPED PRISONER RECAPTURED (Formerly: Escape)

Sections

9.31.090 Escaped prisoner recaptured.

Escape: RCW 9A.76.110 through 9A.76.130.

Limitation of action against officer for permitting escape: RCW 4.16.110.

Parole revoked prisoner deemed escapee: RCW 9.95.130.

Prisoners—State penal institutions: Chapter 9.94 RCW.

9.31.090 Escaped prisoner recaptured. Every person in custody, under sentence of imprisonment for any crime, who shall escape from custody, may be recaptured and imprisoned for a term equal to the unexpired portion of the original term. [1909 c 249 § 89; RRS § 2341.]

Indeterminate sentences: Chapter 9.95 RCW.

Chapter 9.38 FALSE REPRESENTATIONS

Sections

9.38.010 False representation concerning credit.

9.38.020 False representation concerning title.

Agricultural co-ops, false statements: RCW 24.32.330.

County commissioners, falsifying inventory: RCW 36.32.220.

Domestic insurers, corrupt practices: RCW 48.06.190.

Elections

falsification by voters: Chapter 29.85 RCW.

initiative and referendum petitions: RCW 29.79.440.

recall petitions: Chapter 29.82 RCW.

Employment, obtaining by false recommendation: RCW 49.44.040.

Food, drugs, and cosmetics: Chapter 69.04 RCW.

Fraud: Chapter 9A.60 RCW.

Honey act, falsification: RCW 69.28.180.

Insurance, unfair practices: Chapter 48.30 RCW.

Liquor permit falsification: RCW 66.20.200.

Marriage affidavit: RCW 26.04.210.

Motor vehicles, certificates of ownership: RCW 46.12.210, 46.12.220.

Pharmacy licensing: RCW 18.64.250.

Public assistance falsification: RCW 74.08.055.

Warehouse receipts and documents, falsifying: Chapter 22.32 RCW.

9.38.010 False representation concerning credit. Every person who, with intent thereby to obtain credit or financial rating, shall wilfully make any false statement in writing of his assets or liabilities to any person with whom he may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall be guilty of a misdemeanor. [1909 c 249 § 368; RRS § 2620.]

9.38.020 False representation concerning title. Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor. [1909 c 249 § 369; RRS § 2621.]

Chapter 9.40 FIRE, CRIMES RELATING TO

Sections

9.40.040 Operating engine or boiler without spark arrester.
9.40.100 Injuring or tampering with fire alarm apparatus or equipment—Sounding false alarm of fire.

9.40.110 Incendiary devices—Definitions.

9.40.120 Incendiary devices—Penalty.

9.40.130 Incendiary devices—Exceptions.

Arson: Chapter 9A.48 RCW.

Burning without permit in fire protection district—Penalty: RCW 52.12.101, 52.12.105.

County fire regulations: RCW 36.43.040.

Doors of buildings used by public: RCW 70.54.070.

Explosives, crimes relating to: Chapter 70.74 RCW.

Forest fire protection: Chapter 76.04 RCW.

Fraudulent destruction of insured property: RCW 9.91.090, 48.30.220.

Special rights of action: Chapter 4.24 RCW.

State parks, fire violations: RCW 43.51.180.

9.40.040 Operating engine or boiler without spark arrester. Every person who shall operate or permit to be operated in dangerous proximity to any brush, grass or other inflammable material, any spark-emitting engine or boiler which is not equipped with a modern spark-arrester, in good condition, shall be guilty of a misdemeanor. [1929 c 172 § 1; 1909 c 249 § 272; RRS § 2524.]

9.40.100 Injuring or tampering with fire alarm apparatus or equipment—Sounding false alarm of fire. Any person who wilfully and without cause tampers with, molests, injures or breaks any public or private fire

alarm apparatus, emergency phone, radio, or other wire or signal, or any fire fighting equipment, or who wilfully and without having reasonable grounds for believing a fire exists, sends, gives, transmits, or sounds any false alarm of fire, by shouting in a public place or by means of any public or private fire alarm system or signal, or by telephone, is guilty of a misdemeanor. This provision shall not prohibit the testing of fire alarm systems by persons authorized to do so, by a fire department or the director of community development, through the director of fire protection. [1986 c 266 § 80; 1967 c 204 § 1.]

Severability—1986 c 266: See note following RCW 38.52.005.

9.40.110 Incendiary devices—Definitions. For the purposes of RCW 9.40.110 through 9.40.130, as now or hereafter amended, unless the context indicates otherwise:

(1) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(2) "Incendiary device" means any material, substance, device, or combination thereof which is capable of supplying the initial ignition and/or fuel for a fire and is designed to be used as an instrument of wilful destruction. However, no device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for purposes of this section. [1971 ex.s. c 302 § 3; 1969 ex.s. c 79 § 2.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.40.120 Incendiary devices—Penalty. Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than twenty-five years. [1971 ex.s. c 302 § 4; 1969 ex.s. c 79 § 3.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.40.130 Incendiary devices—Exceptions. RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firemen, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section. [1971 ex.s. c 302 § 5; 1969 ex.s. c 79 § 4.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.41

FIREARMS AND DANGEROUS WEAPONS

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9.41.010 Terms defined. (1) "Short firearm" or "pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length.

(2) "Crime of violence" as used in this chapter means:

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

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a crime of violence in subsection (2) (a) of this section; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under subsection (2) (a) or (b) of this section.

(3) "Firearm" as used in this chapter means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(4) "Commercial seller" as used in this chapter means a person who has a federal firearms license. [1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Severability—1983 c 232: "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." [1983 c 232 § 14.]

Severability—1971 ex.s. c 302: "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." [1971 ex.s. c 302 § 35.]

Severability—1961 c 124: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1961 c 124 § 13.]

Preemption and general repealer—1961 c 124: "All laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed." [1961 c 124 § 14.]

Short title—1935 c 172: "This act may be cited as the 'Uniform Firearms Act.'" [1935 c 172 § 18.]

Severability—1935 c 172: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1935 c 172 § 17.]

Construction—1935 c 172: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." [1935 c 172 § 19.]

9.41.030 Being armed prima facie evidence of intent.

In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a pistol and had no license to carry the same shall be prima facie evidence of his intention to commit said crime of violence. [1935 c 172 § 3; RRS § 2516-3.]

9.41.040 Unlawful possession of a short firearm or pistol—Certain persons not precluded from ownership of firearms.

(1) A person is guilty of the crime of unlawful possession of a short firearm or pistol, if, having previously been convicted in this state or elsewhere of a crime of violence or of a felony in which a firearm was used or displayed, the person owns or has in his possession any short firearm or pistol.

(2) Unlawful possession of a short firearm or pistol shall be punished as a class C felony under chapter 9A-.20 RCW.

(3) As used in this section, a person has been "convicted" 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, post-trial motions, and appeals. A person shall not be precluded from possession 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 has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(4) Except as provided in subsection (5) of this section, a person is guilty of the crime of unlawful possession of a short firearm or pistol if, after having been convicted of any felony violation of the uniform controlled substances act, chapter 69.50 RCW, or equivalent statutes of another jurisdiction, or after any period of confinement under RCW 71.05.320 or an equivalent statute of another jurisdiction, or following a record of commitment pursuant to chapter 10.77 RCW or equivalent statutes of another jurisdiction, he owns or has in his possession or under his control any short firearm or pistol.

(5) Notwithstanding subsection (1) of this section, a person convicted of an offense 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(a) 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 ownership, possession, or control of a firearm as a result of the conviction. [1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.050 Carrying pistol. (1) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed weapon.

(2) A person who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(3) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed weapon and: (a) The pistol is on the licensee's person, (b) the licensee is within the vehicle at all times that the pistol is there, or (c) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle. [1982 1st ex.s. c 47 § 3; 1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.060 Exception to restriction on carrying pistol.

The provisions of RCW 9.41.050 shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers, or to members of the army, navy or marine corps of the United States or of the national guard or organized reserves when on duty, or to regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state, or to regularly enrolled members of clubs organized for the purpose of target shooting or modern and antique firearm collecting or to individual hunters: *Provided*, Such members are at, or are going to or from their places of target practice, or their collector's gun shows and exhibits, or are on a hunting, camping or fishing trip, or to officers or employees of the United States

duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving from one place of abode or business to another. [1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

9.41.070 Issue of licenses to carry—Fee—Revocation—Renewal. (1) The judge of a court of record, 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 person within this state for four 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. Such citizen's constitutional right to bear arms shall not be denied to him, unless he:

- (a) Is ineligible to own a pistol under the provisions of RCW 9.41.040; or
- (b) Is under twenty-one years of age; or
- (c) Is subject to a court order or injunction regarding firearms pursuant to RCW 10.99.040, 10.99.045, or 26.09.060; or
- (d) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime of violence; or
- (e) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor.

The license shall be revoked immediately upon conviction of a crime which makes such a person ineligible to own a pistol or upon the third conviction for a violation of this chapter within five calendar years. The license shall be in triplicate, in form to be prescribed by the department of licensing, and shall bear the name, address, and description, 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. The license 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 permit is not a defense to a federal prosecution.

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

(2) The fee for the original issuance of a four-year license shall be twenty dollars: *Provided*, That no other additional charges by any branch or unit of government shall be borne by the applicant for the issuance of the license: *Provided further*, That the fee shall be distributed as follows:

- (a) Four 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; and
- (c) Twelve dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(3) The fee for the renewal of such license shall be twelve dollars: *Provided*, That no other additional charges by any branch or unit of government shall be borne by the applicant for the renewal of the license: *Provided further*, That the fee shall be distributed as follows:

- (a) Four dollars shall be paid to the state general fund; and
- (b) Eight dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(4) 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 (3) of this section. The fee shall be distributed as follows:

(a) Three dollars shall be deposited in the state *game fund and used exclusively 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. 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.

(5) Notwithstanding the requirements of subsections (1) through (4) 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.

(6) 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. A civil suit may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section or chapter. The civil suit may be brought in the county in which the application was made or in Thurston county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of this

chapter shall be awarded costs, including reasonable attorneys' fees, incurred in connection with such legal action. [1985 c 428 § 3; 1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

***Reviser's note:** References to the "game fund" mean "wildlife fund." See note following RCW 77.04.020.

Severability—1985 c 428: See note following RCW 9.41.290.

Severability—1983 c 232: See note following RCW 9.41.010.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.41.080 Delivery to minors and others forbidden. No person shall deliver a pistol to any person under the age of twenty-one or to one who he has reasonable cause to believe has been convicted of a crime of violence, or is a drug addict, an habitual drunkard, or of unsound mind. [1935 c 172 § 8; RRS § 2516-8.]

9.41.090 Commercial sales regulated—Requirements for delivery—Hold on delivery. (1) In addition to the other requirements of this chapter, no commercial seller shall deliver a pistol to the purchaser thereof until:

(a) The purchaser produces a valid concealed pistol license and the commercial seller has recorded the purchaser's name, license number, and issuing agency, such record to be made in triplicate and processed as provided in subsection (4) of this section; or

(b) The seller is notified in writing by the chief of police of the municipality or the sheriff of the county that the purchaser meets the requirements of RCW 9.41.040 and that the application to purchase is granted; or

(c) Five consecutive days including Saturday, Sunday and holidays have elapsed from the time of receipt of the application for the purchase thereof as provided herein by the chief of police or sheriff designated in subsection (4) of this section, and, when delivered, said pistol shall be securely wrapped and shall be unloaded. However, if the purchaser does not have a valid permanent Washington driver's license or state identification card or has not been a resident of the state for the previous consecutive ninety days, the waiting period under this subsection (1)(c) shall be up to sixty days.

(2) In any case under subsection (1)(c) of this section where the applicant has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor, the seller shall hold the delivery of the pistol until the warrant for arrest is served and satisfied by appropriate court appearance. The local jurisdiction for purposes of the sale shall confirm the existence of outstanding warrants within seventy-two hours after notification of the application to purchase a pistol is received. The local jurisdiction shall also immediately confirm the satisfaction of the warrant on request of the seller so that the hold may be released if the warrant was for a crime other than a crime of violence.

(3) In any case where the chief or sheriff of the local jurisdiction has reasonable grounds based on the following circumstances: (a) Open criminal charges, (b) pending criminal proceedings, (c) pending commitment proceedings, (d) an outstanding warrant for a crime of

violence, or (e) an arrest for a crime of violence if the records of disposition have not yet been reported or entered sufficiently to determine eligibility to purchase a pistol, the local jurisdiction may hold the sale and delivery of the pistol beyond five days up to thirty days in order to confirm existing records in this state or elsewhere. After thirty days, the hold will be lifted unless an extension of the thirty days is approved by a local district court or municipal court for good cause shown. An applicant shall be notified of each hold placed on the sale by local law enforcement and of any application to the court for additional hold period to confirm records or confirm the identity of the applicant.

(4) At the time of applying for the purchase of a pistol, the purchaser shall sign in triplicate and deliver to the seller an application containing his or her full name, address, place of birth, and the date and hour of the application; the applicant's driver's license number or state identification card number; and a description of the weapon including, the make, model, caliber and manufacturer's number; and a statement that the purchaser is eligible to own a pistol under RCW 9.41.040. The 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. State permission to purchase a firearm is not a defense to a federal prosecution.

The purchaser shall be given a copy of the *department of game pamphlet on the legal limits of the use of firearms, firearms safety, and the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law.

The seller shall, by the end of the business day, sign and attach his or her address and deliver the original of the application and such other documentation as required under subsection (1) of this section to the chief of police of the municipality or the sheriff of the county of which the seller is a resident. The seller shall deliver the pistol to the purchaser following the period of time specified in this section unless the seller is notified in writing by the chief of police of the municipality or the sheriff of the county, whichever is applicable, denying the purchaser's application to purchase and the grounds thereof. The application shall not be denied unless the purchaser fails to meet the requirements specified in RCW 9.41.040. The chief of police of the municipality or the county sheriff shall maintain a file containing the original of the application to purchase a pistol. [1985 c 428 § 4; 1983 c 232 § 4; 1969 ex.s. c 227 § 1; 1961 c 124 § 7; 1935 c 172 § 9; RRS § 2516-9.]

***Reviser's note:** References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

Severability—1985 c 428: See note following RCW 9.41.290.

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.093 Exemptions. The following shall be exempt from the provisions of RCW 9.41.090 as now or hereinafter amended: sales by wholesalers to dealers; and the

sale of antique pistols exempted by the provisions of RCW 9.41.150, as amended. [1969 ex.s. c 227 § 2.]

9.41.095 Denial of application—Appeal. Any person whose application to purchase a pistol as provided in RCW 9.41.090 as now or hereinafter amended is denied shall have a right to appeal to the legislative body of the municipality or of the county, whichever is applicable, for a review of the denial at a public hearing to be conducted within fifteen days after denial. It shall be the duty of the law enforcement officer recommending the denial to appear at such hearing and to present proof relating to the grounds for denial. In the event that the evidence so presented does not sustain one of the grounds for denial enumerated in RCW 9.41.090, the legislative authority shall authorize the sale.

Any person aggrieved by a determination of the appropriate legislative body not to permit the sale of such weapon is entitled to judicial review by the superior court in the appropriate county. [1969 ex.s. c 227 § 3.]

9.41.097 Supplying information on persons purchasing pistols or applying for concealed pistol licenses. The department of social and health services, mental health institutions, and other health care facilities shall, upon request of a court or law enforcement agency, supply such relevant information as is necessary to determine the eligibility of a person to possess a pistol or to be issued a concealed pistol license under RCW 9.41.070 or to purchase a pistol under RCW 9.41.090. Such information shall be used exclusively for the purposes specified in this section and shall not be made available for public inspection except by the person who is the subject of the information. [1983 c 232 § 5.]

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.098 Forfeiture of firearms, order by courts—Return to owner—Confiscation by law enforcement officer. (1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: *Provided*, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) Found in the possession or under the control of a person at the time the person committed or was arrested for committing a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniform controlled substances act, chapter 69.50 RCW;

(d) Found concealed on a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence

of intoxicating liquor, having 0.10 grams or more of alcohol per two hundred ten liters of breath or 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's breath, blood, or other bodily substance;

(e) Found in the possession of a person prohibited from possessing the firearm under RCW 9.41.040;

(f) Found in the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a crime of violence or a crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) Found in the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Known to have been used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Known to have been used in the commission of a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniform controlled substances act, chapter 69.50 RCW.

(2) Upon order of forfeiture, the court in its discretion shall order destruction of any firearm that is illegal for any person to possess, retention of the firearm as evidence, appropriate use by a law enforcement agency in the state, donation to a historical museum, or sale at a public auction to a commercial seller. The proceeds from any sale shall be divided as follows: The local jurisdiction shall retain its costs, including actual costs of storage and sale, and shall forward the remainder to the state department of wildlife for use in its firearms training program pursuant to RCW 77.32.155. If the court orders delivery to a law enforcement agency and the agency no longer requires use of the firearm, the agency shall dispose of the firearm in a manner which is consistent with this subsection.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section. [1987 c 506 § 91; 1987 c 373 § 7; 1986 c 153 § 1; 1983 c 232 § 6.]

Reviser's note: This section was amended by 1987 c 373 § 7 and by 1987 c 506 § 91, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.100 Dealers to be licensed. No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided. [1935 c 172 § 10; RRS § 2516-10.]

9.41.110 Dealer's licenses, by whom granted and conditions thereof—Wholesale sales excepted—Permits prohibited. The duly constituted licensing authorities of any city, town, or political subdivision of this state shall grant licenses in forms prescribed by the director of licensing effective for not more than one year from the date of issue permitting the licensee to sell pistols within this state subject to the following conditions, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in RCW 9.41.010 through 9.41.160.

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.

(3) No pistol shall be sold (a) in violation of any provisions of RCW 9.41.010 through 9.41.160, nor (b) shall a pistol be sold under any circumstances unless the purchaser is personally known to the seller or shall present clear evidence of his identity.

(4) A true record in triplicate shall be made of every pistol sold, in a book kept for the purpose, the form of which may be prescribed by the director of licensing and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, color and place of birth of the purchaser and a statement signed by the purchaser that he has never been convicted in this state or elsewhere of a crime of violence. One copy shall within six hours be sent by registered mail to the chief of police of the municipality or the sheriff of the county of which the dealer is a resident; the duplicate the dealer shall within seven days send to the director of licensing; the triplicate the dealer shall retain for six years.

(5) This section shall not apply to sales at wholesale.

(6) The dealer's licenses authorized to be issued by this section are general licenses covering all sales by the licensee within the effective period of the licenses.

(7) Except as provided in RCW 9.41.090 as now or hereinafter amended, every city, town and political subdivision of this state is prohibited from requiring the purchaser to secure a permit to purchase or from requiring the dealer to secure an individual permit for each sale.

The fee paid for issuing said license shall be five dollars which fee shall be paid into the state treasury. [1979

c 158 § 2; 1969 ex.s. c 227 § 4; 1963 c 163 § 1; 1961 c 124 § 8; 1935 c 172 § 11; RRS § 2516-11.]

9.41.120 Certain transfers forbidden. No person other than a duly licensed dealer shall make any loan secured by a mortgage, deposit or pledge of a pistol. Any licensed dealer receiving a pistol as a deposit or pledge for a loan shall keep such records and make such reports as are provided by law for pawnbrokers and secondhand dealers in cities of the first class. A duly licensed dealer may mortgage any pistol or stock of pistols but shall not deposit or pledge the same with any other person. [1961 c 124 § 9; 1935 c 172 § 12; RRS § 2516-12.]

Pawnbrokers and second-hand dealers: Chapter 19.60 RCW.

9.41.130 False information forbidden. No person shall, in purchasing or otherwise securing delivery of a pistol or in applying for a license to carry the same, give false information or offer false evidence of his identity. [1935 c 172 § 13; RRS § 2516-13.]

9.41.140 Alteration of identifying marks—Exceptions. No person shall change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol. Possession of any pistol upon which any such mark shall have been changed, altered, removed, or obliterated, shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same. This shall not apply to replacement barrels in old revolvers, which barrels are produced by current manufacturers and therefor do not have the markings on the barrels of the original manufacturers who are no longer in business. [1961 c 124 § 10; 1935 c 172 § 14; RRS § 2516-14.]

9.41.150 Exemptions. RCW 9.41.010 through 9.41.160 shall not apply to antique pistols and revolvers manufactured prior to 1898 and held as collector's items. [1961 c 124 § 11; 1935 c 172 § 15; RRS § 2516-15.]

9.41.160 Penalty. Any violation of any provision of this chapter, except as otherwise provided, shall be a misdemeanor and punishable accordingly. [1984 c 258 § 312; 1983 c 232 § 11; 1983 c 3 § 7; 19 c 124 § 12; 1935 c 172 § 16; RRS § 2516-16.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.170 Alien's license to carry firearms—Exception. It shall be unlawful for any person who is not a citizen of the United States, or who has not declared his intention to become a citizen of the United States, to carry or have in his possession at any time any shotgun, rifle, or other firearm, without first having obtained a license from the director of licensing, and such license is not to be issued by the director of licensing except upon the certificate of the consul domiciled in the state and

representing the country of such alien, that he is a responsible person and upon the payment for the license of the sum of fifteen dollars: *Provided*, That this section shall not apply to Canadian citizens resident in a province which has an enactment or public policy providing substantially similar privilege to residents of the state of Washington and who are carrying or possessing weapons for the purpose of using them in the hunting of game while such persons are in the act of hunting, or while on a hunting trip, or while such persons are competing in a bona fide trap or skeet shoot or any other organized contest where rifles, pistols, or shotguns are used as to weapons used in such contest. Nothing in this section shall be construed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1979 c 158 § 3; 1969 ex.s. c 90 § 1; 1953 c 109 § 1. Prior: 1911 c 52 § 1; RRS § 2517-1.]

9.41.180 Setting spring gun. Every person who shall set a so-called trap, spring pistol, rifle, or other deadly weapon, shall be punished as follows:

(1) If no injury result therefrom to any human being, by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars, or by both.

(2) If injuries not fatal result therefrom to any human being, by imprisonment in the state penitentiary for not more than twenty years.

(3) If the death of a human being results therefrom, by imprisonment in the state penitentiary for not more than twenty years. [1909 c 249 § 266; RRS § 2518.]

9.41.185 Coyote getters. The use of "coyote getters" or similar spring-triggered shell devices shall not constitute a violation of any of the laws of the state of Washington when the use of such "coyote getters" is authorized by the state department of agriculture and/or the state *department of game in cooperative programs with the United States Fish and Wildlife Service, for the purpose of controlling or eliminating coyotes harmful to livestock and game animals on range land or forest areas. [1965 c 46 § 1.]

**Reviser's note:* References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

9.41.190 Machine guns prohibited—Exception. It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun: *Provided, however*, That such limitation shall not apply to any peace officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington: *Provided further*, That this section does not apply to a person, including an employee of such person, who or which is exempt from or licensed under the National Firearms Act (26 U.S.C. section 5801 et seq.), and engaged in the

production, manufacture, or testing of weapons or equipment to be used or purchased by the armed forces of the United States, and having a United States government industrial security clearance. [1982 1st ex.s. c 47 § 2; 1933 c 64 § 1; RRS § 2518-1.]

Severability—1982 1st ex.s. c 47: "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." [1982 1st ex.s. c 47 § 31.]

9.41.200 Machine gun defined. For the purpose of RCW 9.41.190 through 9.41.220 a machine gun is defined as any firearm or weapon known as a machine gun, mechanical rifle, submachine gun, and/or any other weapon, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into such weapon, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second. [1933 c 64 § 2; RRS § 2518-2.]

9.41.210 Penalty. Any person violating any of the provisions of RCW 9.41.190 through 9.41.220 shall be guilty of a felony. [1933 c 64 § 3; RRS § 2518-3.]

9.41.220 Machine guns and parts contraband. All machine guns, or parts thereof, illegally held or possessed are hereby declared to be contraband, and it shall be the duty of all peace officers, and/or any officer or member of the armed forces of the United States or the state of Washington, to seize said machine gun, or parts thereof, wherever and whenever found. [1933 c 64 § 4; RRS § 2518-4.]

9.41.230 Aiming or discharging firearms. Every person who shall aim any gun, pistol, revolver or other firearm, whether loaded or not, at or towards any human being, or who shall wilfully discharge any firearm, air gun or other weapon, or throw any deadly missile in a public place, or in any place where any person might be endangered thereby, although no injury result, shall be guilty of a misdemeanor. [1909 c 249 § 307; 1888 p 100 §§ 2, 3; RRS § 2559.]

Discharging firearm at railroad rolling stock: RCW 81.60.070.

9.41.240 Use of firearms by minor. No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian or other adult approved for the purpose of this section by the parent or guardian, or while under the supervision of a certified safety instructor at an established gun range or firearm training class, any firearm of any kind for hunting or target practice or for other purposes. Every person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a misdemeanor. [1971 c 34 § 1; 1909 c 249 § 308; 1883 p 67 § 1; RRS § 2560.]

9.41.250 Dangerous weapons—Evidence. Every person who shall manufacture, sell or dispose of or have in his possession any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles, or spring blade knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement; who shall furtively carry with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or who shall use any contrivance or device for suppressing the noise of any firearm, shall be guilty of a gross misdemeanor. [1959 c 143 § 1; 1957 c 93 § 1; 1909 c 249 § 265; 1886 p 81 § 1; Code 1881 § 929; RRS § 2517.]

9.41.260 Dangerous exhibitions. Every proprietor, lessee or occupant of any place of amusement, or any plat of ground or building, who shall allow it to be used for the exhibition of skill in throwing any sharp instrument or in shooting any bow gun, pistol or firearm of any description, at or toward any human being, shall be guilty of a misdemeanor. [1909 c 249 § 283; RRS § 2535.]

Fireworks: Chapter 70.77 RCW.

9.41.270 Weapons apparently capable of producing bodily harm, carrying, exhibiting, displaying, or drawing unlawful—Penalty—Exceptions. (1) It shall be unlawful for anyone to carry, exhibit, display or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(2) Any person violating the provisions of subsection (1) above shall be guilty of a gross misdemeanor.

(3) Subsection (1) of this section shall not apply to or affect the following:

(a) Any act committed by a person while in his place of abode or fixed place of business;

(b) Any person who by virtue of his office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;

(c) Any person acting for the purpose of protecting himself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;

(d) Any person making or assisting in making a lawful arrest for the commission of a felony; or

(e) Any person engaged in military activities sponsored by the federal or state governments. [1969 c 8 § 1.]

9.41.280 Students carrying dangerous weapons on school premises—Penalty—Exceptions. (1) It is unlawful for an elementary or secondary school student

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under the age of twenty-one knowingly to carry onto public or private elementary or secondary school premises:

(a) Any firearm; or

(b) Any dangerous weapon as defined in RCW 9.41.250; or

(c) Any device commonly known as "nun-chu-ka sticks", consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means; or

(d) Any device, commonly known as "throwing stars", which are multi-pointed, metal objects designed to embed upon impact from any aspect.

(2) Any such student violating subsection (1) of this section is guilty of a gross misdemeanor.

(3) Subsection (1) of this section does not apply to:

(a) Any student of a private military academy; or

(b) Any student engaged in military activities, sponsored by the federal or state governments while engaged in official duties; or

(c) Any student who is attending a convention or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed; or

(d) Any student who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes conducted on the school premises. [1982 1st ex.s. c 47 § 4.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.290 State preemption. The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law and are consistent with this chapter. Such local ordinances shall have the same or lesser penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality. [1985 c 428 § 1; 1983 c 232 § 12.]

Severability—1985 c 428: "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." [1985 c 428 § 6.]

Application—1983 c 232 § 12: "Section 12 of this act shall not apply to any offense committed prior to July 24, 1983." [1983 c 232 § 13.]

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.300 Firearms prohibited in certain places—Local laws and ordinances—Exceptions—Penalty. (1) It is unlawful for any person to enter the following

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places when he or she knowingly possesses or knowingly has under his or her control a firearm:

(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) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020, (iii) held for extradition or as a material witness, or (iv) 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) A courtroom or judge's chamber, while either is being used for any judicial proceeding. This does not include common areas of egress and ingress of the courthouse;

(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; or

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age.

(2) Notwithstanding RCW 9.41.290, 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 firearm in the possession of a person licensed under RCW 9.41.070; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3) 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.

(4) 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; or

(c) Security personnel while engaged in official duties.

(5) 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.

(6) Subsection (1)(b) of this section does not apply to a judge or court employee or to any person licensed under RCW 9.41.070 who, before entering the restricted area, directly and promptly proceeds to the court administrator or the administrator's designee and obtains written permission to possess the firearm.

(7) 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.

(8) 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.

(9) Any person violating subsection (1) of this section is guilty of a misdemeanor. [1985 c 428 § 2.]

Severability—1985 c 428: See note following RCW 9.41.290.

9.41.310 Information pamphlet. After a public hearing, the *department of game shall publish a pamphlet on firearms safety and the legal limits of the use of firearms. The pamphlet shall include current information on firearms laws and regulations and state preemption of local firearms laws. This pamphlet may be used in the department's hunter safety education program and shall be provided to the department of licensing for distribution to firearms dealers and persons authorized to issue concealed pistol licenses. The *department of game shall reimburse the department of licensing for costs associated with distribution of the pamphlet. [1985 c 428 § 5.]

***Reviser's note:** References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

Severability—1985 c 428: See note following RCW 9.41.290.

Chapter 9.44 FORGERY

Sections

9.44.080 Misconduct in signing a petition.

Ballots, forgery: RCW 29.85.040.

Cigarette tax stamps, forgery: RCW 82.24.100.

Elections, forging on nomination paper: RCW 29.85.140.

Food, drugs, and cosmetics act: Chapter 69.04 RCW.

Forest products, forgery of brands or marks: RCW 76.36.110, 76.36.120.

Forged instruments, tools for making, search and seizure: RCW 10.79.015.

Forgery: RCW 9A.60.020.

Honey act: RCW 69.28.180.

Land registration forgery: RCW 65.12.760.

Misdescription of instrument forged immaterial: RCW 10.37.080.

Mutual savings bank, falsification: RCW 32.04.100.

Obtaining employment by forged recommendation: RCW 49.44.040.

Offering forged instrument for filing: RCW 40.16.030.

Optometry certificates falsification: RCW 18.53.140, 18.53.150.

Osteopathy license falsification: RCW 18.57.160.

Public bonds, forgery: Chapter 39.44 RCW.

Public works, falsification of records, etc.: RCW 39.04.110, 39.12.050.

9.44.080 Misconduct in signing a petition. Every person who shall wilfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his own name to or withdraw his name from any referendum or other petition circulated in pursuance of any law of this state or any municipal ordinance; or in signing his name to such petition shall wilfully subscribe to any false statement concerning his age, citizenship, residence or other qualifications to sign the same; or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor. [1909 c 249 § 337; RRS § 2589.]

*Initiative and referendum petition forgery: RCW 29.79.440, 29.79.490.
Recall petition forgery: RCW 29.82.170, 29.82.220.*

**Chapter 9.45
FRAUDS AND SWINDLES**

Sections

- 9.45.020 Substitution of child.
- 9.45.060 Encumbered, leased, or rented personal property—Construction.
- 9.45.062 Failure to deliver leased personal property—Requisites for prosecution—Construction.
- 9.45.070 Mock auctions.
- 9.45.080 Fraudulent removal of property.
- 9.45.090 Knowingly receiving fraudulent conveyance.
- 9.45.100 Fraud in assignment for benefit of creditors.
- 9.45.122 Measurement of goods, raw materials, and agricultural products—Declaration of public policy.
- 9.45.124 Measurement of goods, raw materials, and agricultural products—Measuring inaccurately—Altering measuring devices—Penalty.
- 9.45.126 Measurement of goods, raw materials, and agricultural products—Inducing violations—Penalty.
- 9.45.160 Fraud in liquor warehouse receipts.
- 9.45.170 Penalty.
- 9.45.180 Fraud in operating coin-box telephone or other receptacle.
- 9.45.190 Penalty for manufacture or sale of slugs to be used for coin.
- 9.45.210 Altering sample or certificate of assay.
- 9.45.220 Making false sample or assay of ore.
- 9.45.230 Penalty.
- 9.45.240 Fraud in obtaining telephone or telegraph service—Penalty.

Agricultural co-ops, falsification or removal of records, etc.: RCW 24.32.330, 24.32.340.

Bank or trust company

*falsification or destruction of records: RCW 30.12.090, 30.12.100.
preferential transfers: RCW 30.44.110.
purchase of assets by officer: RCW 30.12.050.
receiving deposits when insolvent: RCW 30.44.120.
using name of unlawfully: RCW 30.04.020.*

Caskets, record when body cremated: RCW 68.50.250.

Cemeteries, representing fund as perpetual: RCW 68.40.085.

Cigarette tax fraud: RCW 82.24.110.

Domestic insurers, illegal or corrupt practices: RCW 48.06.190, 48.07.060, 48.08.040.

Election fraud: Chapter 29.85 RCW.

Employment agent, fraud: RCW 49.44.050.

Falsification of books of credit union: Chapter 31.12 RCW.

Food, drugs, and cosmetics: RCW 69.04.040, 69.04.060, 69.04.070.

Food fish and shellfish, false or misleading information: RCW 75.12.430.

Fraud: Chapter 9A.60 RCW.

Fraud by engraver of public bonds: RCW 39.44.101.

Fraudulent conveyances: Chapter 19.40 RCW.

House trailer excise tax fraud: RCW 82.50.170.

Industrial loan company receiving money when insolvent: RCW 31.04.220.

Insurance

agent, etc., appropriating funds, etc.: RCW 48.17.480.

fraud and unfair practices: Chapter 48.30 RCW.

Insured property, fraudulent injury or destruction: RCW 9.91.090, 48.30.220.

Intent to defraud: RCW 10.58.040.

Land registration fraud: RCW 65.12.750.

Motor vehicle

certificates of ownership, falsifying: RCW 46.12.210, 46.12.220.

excise tax fraud: RCW 82.44.120.

fuel tax fraud: RCW 82.36.330, 82.36.380 through 82.36.400.

Mutual savings banks

falsification of books, etc.: RCW 32.04.100.

transfers due to insolvency: RCW 32.24.080.

Obtaining employment by false recommendation: RCW 49.44.040.

Ownership of property, proof of: RCW 10.58.060.

Public assistance fraud: RCW 74.08.055, 74.08.331.

Savings and loan associations

falsification of books, etc.: RCW 33.36.040.

illegal loans and purchasing at discount by employees: RCW 33.36.010, 33.36.020.

preferential transfers of property: RCW 33.36.030.

Sporting contest fraud: RCW 67.24.010.

State employees' retirement, falsification of statements, etc.: RCW 41.40.400.

State patrol retirement fund, falsifications: RCW 43.43.320.

Tax assessed property, removal to avoid payment: RCW 84.56.120, 84.56.200.

Teachers' retirement, falsification of statements, etc.: RCW 41.32.670.

Wages, rebating, etc., by employers: RCW 49.52.050, 49.52.090.

Warehouseman or common carrier issuing false documents: Chapter 22.32 RCW.

9.45.020 Substitution of child. Every person to whom a child has been confided for nursing, education or any other purpose, who, with intent to deceive a person, guardian or relative of such child, shall substitute or produce to such parent, guardian or relative, another child or person in the place of the child so confided, shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 123; RRS § 2375.]

9.45.060 Encumbered, leased, or rented personal property—Construction. Every person being in possession thereof, who shall sell, remove, conceal, convert to his own use, or destroy or connive at or consent to the sale, removal, conversion, concealment or destruction of any personal property or any part thereof, upon which a security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease exists, with intent to hinder, delay, or defraud the secured party of such security agreement, or the holder of such mortgage, lien, or conditional sales contract or the lessor under such lease

or rentor of [under] such rental agreement, or any assignee of such security agreement, mortgage, lien, conditional sales contract, rental agreement or lease shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision. [1971 c 61 § 1; 1965 ex.s. c 109 § 1; 1909 c 249 § 377; RRS § 2629.]

Destruction or removal of fixtures, etc., from mortgaged real property: RCW 61.12.030.

Larceny, sale of mortgaged property: Chapter 9A.56 RCW.

9.45.062 Failure to deliver leased personal property—Requisites for prosecution—Construction. Every person being in possession thereof who shall wilfully and without reasonable cause fail to deliver leased personal property to the lessor within ten days after written notice of the expiration of the lease has been mailed to the lessee by registered or certified mail with return receipt requested, mailed to the last known address of the lessee, shall be guilty of a gross misdemeanor: *Provided*, That there shall be no prosecution under this section unless such lease is in writing, and contains a warning that failure to promptly return the leased property may result in a criminal prosecution, and the notice mailed pursuant to the provisions of this section shall clearly state that the lessee may be guilty of a crime upon his failure to return the property to the lessor within ten days.

In any prosecution under this section, any allegation containing a description of the lease by reference to the date thereof and names of the parties shall be sufficiently definite and certain.

As used in this section, the term "lease" shall also include rental agreements.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision. [1971 c 61 § 2.]

9.45.070 Mock auctions. Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment in the state penitentiary for not more than five years or in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by auction, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall

be guilty of a misdemeanor. [1909 c 249 § 378; RRS § 2630.]

Auctioneering without license: RCW 36.71.070.

Auctioneers: Chapter 18.11 RCW.

9.45.080 Fraudulent removal of property. Every person who, with intent to defraud a prior or subsequent purchaser thereof, or prevent any of his property being made liable for the payment of any of his debts, or levied upon by an execution or warrant of attachment, shall remove any of his property, or secrete, assign, convey or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey or otherwise dispose of any of his books or accounts, vouchers or writings in any way relating to his business affairs, or destroy, obliterate, alter or erase any of such books of account, accounts, vouchers or writing or any entry, memorandum or minute therein contained, shall be guilty of a gross misdemeanor. [1909 c 249 § 379; RRS § 2631.]

9.45.090 Knowingly receiving fraudulent conveyance. Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him in violation of, or with the intent to violate RCW 9.45.080, shall be guilty of a misdemeanor. [1909 c 249 § 380; RRS § 2632.]

9.45.100 Fraud in assignment for benefit of creditors. Every person who, having made, or being about to make, a general assignment of his property to pay his debts, shall by color or aid of any false or fraudulent representation, pretense, token or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor. [1909 c 249 § 381; RRS § 2633.]

Assignment for benefit of creditors: Chapter 7.08 RCW.

Banks and trust companies, preferential transfers: RCW 30.44.110.

Mutual savings banks, transfer of assets due to insolvency: RCW 32.24.080.

9.45.122 Measurement of goods, raw materials, and agricultural products—Declaration of public policy. Because of the widespread importance to the marketing of goods, raw materials, and agricultural products such as, but not limited to, grains, timber, logs, wood chips, scrap metal, oil, gas, petroleum products, coal, fish and other commodities, that qualitative and quantitative measurements of such goods, materials and products be accurately and honestly made, it is declared to be the public policy of this state that certain conduct with respect to said measurement be declared unlawful. [1967 c 200 § 1.]

Severability—1967 c 200: "If any provision of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1967 c 200 § 13.]

Weights and measures: Chapter 19.94 RCW.

9.45.124 Measurement of goods, raw materials, and agricultural products—Measuring inaccurately—Altering measuring devices—Penalty. Every person, corporation, or association whether profit or nonprofit, who shall ask or receive, or conspire to ask or receive, directly or indirectly, any compensation, gratuity, or reward or any promise thereof, on any agreement or understanding that he shall (1) intentionally make an inaccurate visual or mechanical measurement or an intentionally inaccurate recording of any visual or mechanical measurement of goods, raw materials, and agricultural products (whether severed or unsevered from the land) which he has or will have the duty to measure, or shall (2) intentionally change, alter or affect, for the purpose of making an inaccurate measurement, any equipment or other device which is designed to measure, either qualitatively or quantitatively, such goods, raw materials, and agricultural products, or shall intentionally alter the recordation of such measurements, shall be guilty of a felony, punishable by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or both. [1967 c 200 § 2.]

9.45.126 Measurement of goods, raw materials, and agricultural products—Inducing violations—Penalty. Every person who shall give, offer or promise, or conspire to give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any person, corporation, independent contractor, or agent, employee or servant thereof with intent to violate RCW 9.45.124, shall be guilty of a felony, punishable by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or both. [1967 c 200 § 3.]

9.45.160 Fraud in liquor warehouse receipts. It shall be unlawful for any person, firm, association or corporation to make, utter, circulate, sell or offer for sale any certificate of any warehouse, distillery or depository for intoxicating liquors unless the identical liquor mentioned in such certificate is in the possession of the warehouse, distillery or depository mentioned in such certificate fully paid for, so that the owners and holder of such certificate will be entitled to obtain such intoxicating liquors without the payment of any additional sum except the tax of the government and the tax of the state, county and city in which such warehouse, distillery or depository may be located, and any storage charges. [1909 c 202 § 1. No RRS.]

9.45.170 Penalty. Any person violating any of the provisions of RCW 9.45.160, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not more than five years nor less than one year, or imprisonment in the county jail for any length of time not exceeding one year. [1909 c 202 § 2. No RRS.]

9.45.180 Fraud in operating coin-box telephone or other receptacle. Any person who shall knowingly and

wilfully operate, or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated, [any] coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of such machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service without depositing in and surrendering to such machine, coin-box telephone or receptacle lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such machine, coin-box telephone or receptacle, shall be guilty of a misdemeanor. [1929 c 184 § 1; RRS § 5842-1.]

9.45.190 Penalty for manufacture or sale of slugs to be used for coin. Any person who, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any coin-box telephone or other receptacle, depository or contrivance, designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, or who, knowing or having cause to believe, that the same is intended for unlawful use, shall manufacture for sale, or sell or give away any slug, device, or substance whatsoever intended or calculated to be placed or deposited in any coin-box telephone or other such receptacle, depository or contrivance, shall be guilty of a misdemeanor. [1929 c 184 § 2; RRS § 5842-2.]

9.45.210 Altering sample or certificate of assay. Any person who shall interfere with or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong or defraud, shall be deemed guilty of a felony. [1890 p 99 § 2; RRS § 2712.]

9.45.220 Making false sample or assay of ore. Any person who shall, with intent to cheat, wrong or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, shall be deemed guilty of a felony. [1890 p 99 § 3; RRS § 2713.]

9.45.230 Penalty. Any person violating any of the provisions of RCW 9.45.210 or 9.45.220 shall be deemed guilty of a felony, and upon conviction thereof, shall be fined in any sum not less than fifty nor more than one thousand dollars, or by imprisonment in the penitentiary for not less than one year nor more than five years, or by both such fine and imprisonment. [1983 c 3 § 8; 1890 p 99 § 4; RRS § 2714.]

9.45.240 Fraud in obtaining telephone or telegraph service—Penalty. (1) Every person who, with intent to evade the provisions of any order of the Washington utilities and transportation commission or of any tariff, rule, or regulation lawfully filed with said commission by any telephone or telegraph company, or with intent to defraud, obtains telephone or telegraph service from any telephone or telegraph company through the use of a false or fictitious name or telephone number or the unauthorized use of the name or telephone number of another, or through any other trick, deceit, or fraudulent device, shall be guilty of a misdemeanor. If the value of the telephone or telegraph service which any person obtains in violation of this section during a period of ninety days exceeds:

(a) Fifty dollars in the aggregate, then such person shall be guilty of a gross misdemeanor;

(b) Two hundred fifty dollars in the aggregate, then such person shall be guilty of a class C felony.

However, for any act which constitutes a violation of both this subsection and subsection (2) of this section the provisions of subsection (2) of this section shall be exclusive.

(2) Every person who:

(a) Makes, possesses, sells, gives, or otherwise transfers to another an instrument, apparatus, or device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message; or

(b) Sells, gives, or otherwise transfers to another plans or instructions for making or assembling an instrument, apparatus, or device described in subparagraph (a) of this subsection with knowledge or reason to believe that they may be used to make or assemble such instrument, apparatus, or device shall be guilty of a felony. [1981 c 252 § 1; 1977 ex.s. c 42 § 1; 1974 ex.s. c 160 § 2; 1972 ex.s. c 75 § 1; 1955 c 114 § 1.]

Publishing number or code of telephone company credit card: RCW 9.26A.090.

Chapter 9.46

GAMBLING—1973 ACT

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State lottery commission—Sale of tickets or shares—Other law inapplicable: RCW 67.70.210.

9.46.010 Legislative declaration. It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.

The legislature further declares that the raising of funds for the promotion of bona fide charitable or non-profit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.

The legislature further declares that the conducting of bingo, raffles, and amusement games and the operation of punch boards, pull-tabs, card games and other social pastimes, when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto, are hereby authorized, as are only such lotteries for which no valuable consideration has been paid or agreed to be paid as hereinafter in this chapter provided.

The legislature further declares that fishing derbies shall not constitute any form of gambling and shall not be considered as a lottery, a raffle, or an amusement game and shall not be subject to the provisions of this chapter or any rules and regulations adopted hereunder.

All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end. [1975 1st ex.s. c 259 § 1; 1974 ex.s. c 155 § 1; 1974 ex.s. c 135 § 1; 1973 1st ex.s. c 218 § 1.]

Reviser's note: Throughout this chapter as devolved from 1973 1st ex.s. c 218 the phrase "this act" has been changed to "this chapter." In addition to sections codified in this chapter, 1973 1st ex.s. c 218 had a repealer section (29) repealing RCW 9.47.150 through 9.47.170, 9.47.300 through 9.47.440, 9.59.010 through 9.59.050, and 82.28.010 through 82.28.060 and a legislative directive section (30) stating that sections 1 through 28 would constitute a new chapter in Title 9 RCW.

Severability—1974 ex.s. c 155: "If any provision of this 1974 amendatory 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." [1974 ex.s. c 155 § 13; 1974 ex.s. c 135 § 13.] Section 14 of the act, which provided for an effective date and that the act would be subject to referendum petition, was vetoed by the governor. The veto and the related message can be found in chapter 155, Laws of 1974 extraordinary session.

9.46.0201 "Amusement game." "Amusement game," as used in this chapter, means a game played for entertainment in which:

- (1) The contestant actively participates;
- (2) The outcome depends in a material degree upon the skill of the contestant;
- (3) Only merchandise prizes are awarded;
- (4) The outcome is not in the control of the operator;
- (5) The wagers are placed, the winners are determined, and a distribution of prizes or property is made in the presence of all persons placing wagers at such game; and

(6) Said game is conducted or operated by any agricultural fair, person, association, or organization in such manner and at such locations as may be authorized by rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended.

Cake walks as commonly known and fish ponds as commonly known shall be treated as amusement games for all purposes under this chapter. [1987 c 4 § 2. Formerly RCW 9.46.020(1), part.]

9.46.0205 "Bingo." "Bingo," as used in this chapter, means a game conducted only in the county within which the organization is principally located in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in which no cards are sold except

at the time and place of said game, when said game is conducted by a bona fide charitable or nonprofit organization which does not conduct or allow its premises to be used for conducting bingo on more than three occasions per week and which does not conduct bingo in any location which is used for conducting bingo on more than three occasions per week, or if an agricultural fair authorized under chapters 15.76 and 36.37 RCW, which does not conduct bingo on more than twelve consecutive days in any calendar year, and except in the case of any agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a bona fide member or an employee of said organization takes any part in the management or operation of said game, and no person who takes any part in the management or operation of said game takes any part in the management or operation of any game conducted by any other organization or any other branch of the same organization, unless approved by the commission, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game. For the purposes of this section, the organization shall be deemed to be principally located in the county within which it has its primary business office. If the organization has no business office, the organization shall be deemed to be located in the county of principal residence of its chief executive officer: *Provided*, That any organization which is conducting any licensed and established bingo game in any locale as of January 1, 1981, shall be exempt from the requirement that such game be conducted in the county in which the organization is principally located. [1987 c 4 § 3. Formerly RCW 9.46.020(2).]

9.46.0209 "Bona fide charitable or nonprofit organization." "Bona fide charitable or nonprofit organization," as used in this chapter, means: (1) Any organization duly existing under the provisions of chapters 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or (2) any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. Such an organization must have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to operate a

gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required. It must have not less than fifteen bona fide active members each with the right to an equal vote in the election of the officers, or board members, if any, who determine the policies of the organization in order to receive a gambling license. An organization must demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter. [1987 c 4 § 4. Formerly RCW 9.46.020(3).]

9.46.0213 "Bookmaking." "Bookmaking," as used in this chapter, means accepting bets as a business, rather than in a casual or personal fashion, upon the outcome of future contingent events. [1987 c 4 § 5. Formerly RCW 9.46.020(4).]

9.46.0217 "Commercial stimulant." "Commercial stimulant," as used in this chapter, means an activity is operated as a commercial stimulant, for the purposes of this chapter, only when it is an incidental activity operated in connection with, and incidental to, an established business, with the primary purpose of increasing the volume of sales of food or drink for consumption on that business premises. The commission may by rule establish guidelines and criteria for applying this definition to its applicants and licensees for gambling activities authorized by this chapter as commercial stimulants. [1987 c 4 § 6. Formerly RCW 9.46.020(5).]

9.46.0221 "Commission." "Commission," as used in this chapter, means the Washington state gambling commission created in RCW 9.46.040. [1987 c 4 § 7. Formerly RCW 9.46.020(6).]

9.46.0225 "Contest of chance." "Contest of chance," as used in this chapter, means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. [1987 c 4 § 8. Formerly RCW 9.46.020(7).]

9.46.0229 "Fishing derby." "Fishing derby," as used in this chapter, means a fishing contest, with or without the payment or giving of an entry fee or other consideration by some or all of the contestants, wherein prizes are awarded for the species, size, weight, or quality of fish caught in a bona fide fishing or recreational event. [1987 c 4 § 9. Formerly RCW 9.46.020(8).]

9.46.0233 "Fund raising event." (1) "Fund raising event," as used in this chapter, means a fund raising event conducted during any seventy-two consecutive hours but exceeding twenty-four consecutive hours and not more than once in any calendar year or a fund raising event conducted not more than twice each calendar year for not more than twenty-four consecutive hours each time by a bona fide charitable or nonprofit organization as defined in RCW 9.46.0209 other than any agricultural fair referred to thereunder, upon authorization therefor by the commission, which the legislature hereby authorizes to issue a license therefor, with or without fee, permitting the following activities, or any of them, during such event: Bingo, amusement games, contests of chance, lotteries and raffles: *Provided*, That (a) gross wagers and bets received by the organization less the amount of money paid by the organization as winnings and for the purchase cost of prizes given as winnings do not exceed ten thousand dollars during the total calendar days of such fund raising event in the calendar year; (b) such activities shall not include any mechanical gambling or lottery device activated by the insertion of a coin or by the insertion of any object purchased by any person taking a chance by gambling in respect to the device; (c) only bona fide members of the organization who are not paid for such service shall participate in the management or operation of the activities, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization; and (d) such organization shall notify the appropriate local law enforcement agency of the time and place where such activities shall be conducted. The commission shall require an annual information report setting forth in detail the expenses incurred and the revenue received relative to the activities permitted.

(2) Bona fide charitable or nonprofit organizations holding a license to conduct a fund raising event may join together to jointly conduct a fund raising event if:

(a) Approval to do so is received from the commission; and

(b) The method of dividing the income and expenditures and the method of recording and handling of funds are disclosed to the commission in the application for approval of the joint fund raising event and are approved by the commission.

The gross wagers and bets received by the organizations less the amount of money paid by the organizations as winnings and for the purchase costs of prizes given as winnings may not exceed ten thousand dollars during the total calendar days of such event. The net receipts each organization receives shall count against the organization's annual limit stated in this subsection.

A joint fund raising event shall count against only the lead organization or organizations receiving fifty percent or more of the net receipts for the purposes of the number of such events an organization may conduct each year.

The commission may issue a joint license for a joint fund raising event and charge a license fee for such license according to a schedule of fees adopted by the commission which reflects the added cost to the commission of licensing more than one licensee for the event. [1987 c 4 § 24. Formerly RCW 9.46.020(23).]

9.46.0237 "Gambling." "Gambling," as used in this chapter, means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling does not include fishing derbies as defined by this chapter, parimutuel betting as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health, or accident insurance. In addition, a contest of chance which is specifically excluded from the definition of lottery under this chapter shall not constitute gambling. [1987 c 4 § 10. Formerly RCW 9.46.020(9).]

9.46.0241 "Gambling device." "Gambling device," as used in this chapter, means: (1) Any device or mechanism the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance; (2) any device or mechanism which, when operated for a consideration, does not return the same value or thing of value for the same consideration upon each operation thereof; (3) any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and (4) any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. In the application of this definition, a pinball machine or similar mechanical amusement device which confers only an immediate and unrecorded right of replay on players thereof, which does not contain any mechanism which varies the chance of winning free games or the number of free games which may be won or a mechanism or a chute for dispensing coins or a facsimile thereof, and which prohibits multiple winnings depending upon the number of coins inserted and requires the playing of five balls individually upon the insertion of a nickel or dime, as the case may be, to complete any one operation thereof, shall not be deemed a gambling device: *Provided*, That owning, possessing, buying, selling, renting, leasing, financing, holding a security interest in, storing, repairing and transporting

such pinball machines or similar mechanical amusement devices shall not be deemed engaging in professional gambling for the purposes of this chapter and shall not be a violation of this chapter: *Provided further*, That any fee for the purchase or rental of any such pinball machines or similar amusement devices shall have no relation to the use to which such machines are put but be based only upon the market value of any such machine, regardless of the location of or type of premises where used, and any fee for the storing, repairing and transporting thereof shall have no relation to the use to which such machines are put, but be commensurate with the cost of labor and other expenses incurred in any such storing, repairing and transporting. [1987 c 4 § 11. Formerly RCW 9.46.020(10).]

9.46.0245 "Gambling information." "Gambling information," as used in this chapter, means any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition, information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling. This section shall not apply to newspapers of general circulation or commercial radio and television stations licensed by the federal communications commission. [1987 c 4 § 12. Formerly RCW 9.46.020(11).]

9.46.0249 "Gambling premises." "Gambling premises," as used in this chapter, means any building, room, enclosure, vehicle, vessel or other place used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling. [1987 c 4 § 13. Formerly RCW 9.46.020(12).]

9.46.0253 "Gambling record." "Gambling record," as used in this chapter, means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling. [1987 c 4 § 14. Formerly RCW 9.46.020(13).]

9.46.0257 "Lottery." "Lottery," as used in this chapter, means a scheme for the distribution of money or property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance. [1987 c 4 § 15. Formerly RCW 9.46.020(14).]

9.46.0261 "Member," "bona fide member." "Member" and "bona fide member," as used in this chapter, mean a person accepted for membership in an organization eligible to be licensed by the commission under this chapter upon application, with such action being recorded in the official minutes of a regular meeting or who has held full and regular membership status in the organization for a period of not less than twelve consecutive months prior to participating in the management or operation of any gambling activity. Such membership

must in no way be dependent upon, or in any way related to, the payment of consideration to participate in any gambling activity.

Member or bona fide member shall include only members of an organization's specific chapter or unit licensed by the commission or otherwise actively conducting the gambling activity: *Provided*, That:

(1) Members of chapters or local units of a state, regional or national organization may be considered members of the parent organization for the purpose of a gambling activity conducted by the parent organization, if the rules of the parent organization so permit;

(2) Members of a bona fide auxiliary to a principal organization may be considered members of the principal organization for the purpose of a gambling activity conducted by the principal organization. Members of the principal organization may also be considered members of its auxiliary for the purpose of a gambling activity conducted by the auxiliary; and

(3) Members of any chapter or local unit within the jurisdiction of the next higher level of the parent organization, and members of a bona fide auxiliary to that chapter or unit, may assist any other chapter or local unit of that same organization licensed by the commission in the conduct of gambling activities.

No person shall be a member of any organization if that person's primary purpose for membership is to become, or continue to be, a participant in, or an operator or manager of, any gambling activity or activities. [1987 c 4 § 16. Formerly RCW 9.46.020(15).]

9.46.0265 "Player." "Player," as used in this chapter, means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any form of gambling in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gambling activity. A natural person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor, and supplying cards or other equipment used therein. A person who engages in "bookmaking" as defined in this chapter is not a "player." [1987 c 4 § 17. Formerly RCW 9.46.020(16).]

9.46.0269 "Professional gambling." (1) A person is engaged in "professional gambling" for the purposes of this chapter when:

(a) Acting other than as a player or in the manner authorized by this chapter, the person knowingly engages in conduct which materially aids any other form of gambling activity; or

(b) Acting other than as a player or in the manner authorized by this chapter, the person knowingly accepts or receives money or other property pursuant to an

agreement or understanding with any other person whereby he or she participates or is to participate in the proceeds of gambling activity;

- (c) The person engages in bookmaking; or
- (d) The person conducts a lottery.

(2) Conduct under subsection (1)(a) of this section, except as exempted under this chapter, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit the premises to be used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities authorized by this chapter, and acting other than as a player, and the person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, the person shall be considered as being engaged in professional gambling: *Provided*, That the proprietor of a bowling establishment who awards prizes obtained from player contributions, to players successfully knocking down pins upon the contingency of identifiable pins being placed in a specified position or combination of positions, as designated by the posted rules of the bowling establishment, where the proprietor does not participate in the proceeds of the "prize fund" shall not be construed to be engaging in "professional gambling" within the meaning of this chapter: *Provided further*, That the books and records of the games shall be open to public inspection. [1987 c 4 § 18. Formerly RCW 9.46.020(17).]

9.46.0273 "Punch boards," "pull-tabs." "Punch boards" and "pull-tabs," as used in this chapter, shall be given their usual and ordinary meaning as of July 16, 1973, except that such definition may be revised by the commission pursuant to rules and regulations promulgated pursuant to this chapter. [1987 c 4 § 19. Formerly RCW 9.46.020(18).]

9.46.0277 "Raffle." "Raffle," as used in this chapter, means a game in which tickets bearing an individual number are sold for not more than five dollars each and in which a prize or prizes are awarded on the basis of a drawing from the tickets by the person or persons conducting the game, when the game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of the organization takes any part in the management or operation of the game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting the game. [1987 c 4 § 20. Formerly RCW 9.46.020(19).]

9.46.0281 "Social card game." "Social card game," as used in this chapter, means a card game, including

but not limited to the game commonly known as "Mah-Jongg," which constitutes gambling and contains each of the following characteristics:

(1) There are two or more participants and each of them are players. However, no business with a public cardroom on its premises may have more than five separate tables at which card games are played;

(2) A player's success at winning money or other thing of value by overcoming chance is in the long run largely determined by the skill of the player;

(3) No organization, corporation or person collects or obtains or charges any percentage of or collects or obtains any portion of the money or thing of value wagered or won by any of the players: *Provided*, That this subsection shall not preclude a player from collecting or obtaining his or her winnings;

(4) No organization or corporation, or person collects or obtains any money or thing of value from, or charges or imposes any fee upon, any person which either enables him or her to play or results in or from his or her playing in excess of two dollars per half hour of playing time by that person collected in advance: *Provided*, That a fee may also be charged for entry into a tournament for prizes, which fee shall not exceed fifty dollars, including all separate fees which might be paid by a player for various phases or events of the tournament: *Provided further*, That this subsection shall not apply to the membership fee in any bona fide charitable or nonprofit organization;

(5) The type of card game is one specifically approved by the commission pursuant to RCW 9.46.070; and

(6) The extent of wagers, money or other thing of value which may be wagered or contributed by any player does not exceed the amount or value specified by the commission pursuant to RCW 9.46.070. [1987 c 4 § 21. Formerly RCW 9.46.020(20).]

9.46.0285 "Thing of value." "Thing of value," as used in this chapter, means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge. [1987 c 4 § 22. Formerly RCW 9.46.020(21).]

9.46.0289 "Whoever," "person." "Whoever" and "person," as used in this chapter, include natural persons, corporations and partnerships and associations of persons; and when any corporate officer, director or stockholder or any partner authorizes, participates in, or knowingly accepts benefits from any violation of this chapter committed by his or her corporation or partnership, he or she shall be punishable for such violation as if it had been directly committed by him or her. [1987 c 4 § 23. Formerly RCW 9.46.020(22).]

9.46.0305 Dice or coin contests for music, food, or beverage payment. The legislature hereby authorizes the

wagering on the outcome of the roll of dice or the flipping of or matching of coins on the premises of an establishment engaged in the business of selling food or beverages for consumption on the premises to determine which of the participants will pay for coin-operated music on the premises or certain items of food or beverages served or sold by such establishment and therein consumed. Such establishments are hereby authorized to possess dice and dice cups on their premises, but only for use in such limited wagering. Persons engaged in such limited form of wagering shall not be subject to the criminal or civil penalties otherwise provided for in this chapter: *Provided*, That minors shall be barred from engaging in the wagering activities allowed by this chapter. [1987 c 4 § 25. Formerly RCW 9.46.020(1), part.]

9.46.0311 Charitable, nonprofit organizations—
Authorized gambling activities. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct bingo games, raffles, amusement games, and fund raising events, and to utilize punch boards and pull-tabs and to allow their premises and facilities to be used by only members, their guests, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, to play social card games authorized by the commission, when licensed, conducted or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto. [1987 c 4 § 26. Formerly RCW 9.46.030(1).]

9.46.0315 Raffles—No license required, when. Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of raffles, are hereby authorized to conduct raffles without obtaining a license to do so from the commission when such raffles are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission; when gross revenues from all such raffles held by the organization during the calendar year do not exceed five thousand dollars; and when tickets to such raffles are sold only to, and winners are determined only from among, the regular members of the organization conducting the raffle: *Provided*, That the term members for this purpose shall mean only those persons who have become members prior to the commencement of the raffle and whose qualification for membership was not dependent upon, or in any way related to, the purchase of a ticket, or tickets, for such raffles. [1987 c 4 § 27. Formerly RCW 9.46.030(2).]

9.46.0321 Bingo, raffles, amusement games—No license required, when. Bona fide charitable or bona fide nonprofit organizations organized primarily for purposes other than the conduct of such activities are hereby authorized to conduct bingo, raffles, and amusement games, without obtaining a license to do so from the commission but only when:

(1) Such activities are held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission;

(2) Said activities are, alone or in any combination, conducted no more than twice each calendar year and over a period of no more than twelve consecutive days each time, notwithstanding the limitations of RCW 9.46.0205: *Provided*, That a raffle conducted under this subsection may be conducted for a period longer than twelve days;

(3) Only bona fide members of that organization, who are not paid for such services, participate in the management or operation of the activities;

(4) Gross revenues to the organization from all the activities together do not exceed five thousand dollars during any calendar year;

(5) All revenue therefrom, after deducting the cost of prizes and other expenses of the activity, is devoted solely to the purposes for which the organization qualifies as a bona fide charitable or nonprofit organization;

(6) The organization gives notice at least five days in advance of the conduct of any of the activities to the local police agency of the jurisdiction within which the activities are to be conducted of the organization's intent to conduct the activities, the location of the activities, and the date or dates they will be conducted; and

(7) The organization conducting the activities maintains records for a period of one year from the date of the event which accurately show at a minimum the gross revenue from each activity, details of the expenses of conducting the activities, and details of the uses to which the gross revenue therefrom is put. [1987 c 4 § 28. Formerly RCW 9.46.030(3).]

9.46.0325 Social card games, punch boards, pull-tabs authorized. The legislature hereby authorizes any person, association or organization operating an established business primarily engaged in the selling of food or drink for consumption on the premises to conduct social card games and to utilize punch boards and pull-tabs as a commercial stimulant to such business when licensed and utilized or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto. [1987 c 4 § 29. Formerly RCW 9.46.030(4).]

9.46.0331 Amusement games authorized. The legislature hereby authorizes any person to conduct or operate amusement games when licensed and operated pursuant to the provisions of this chapter and rules and regulations adopted by the commission at such locations as the commission may authorize. [1987 c 4 § 30. Formerly RCW 9.46.030(5).]

9.46.0335 Sports pools authorized. The legislature hereby authorizes any person, association, or organization to conduct sports pools without a license to do so from the commission but only when the outcome of which is dependent upon the score, or scores, of a certain athletic contest and which is conducted only in the following manner:

(1) A board or piece of paper is divided into one hundred equal squares, each of which constitutes a chance to win in the sports pool and each of which is offered directly to prospective contestants at one dollar or less;

(2) The purchaser of each chance or square signs his or her name on the face of each square or chance he or she purchases; and

(3) At some time not later than prior to the start of the subject athletic contest the pool is closed and no further chances in the pool are sold;

(4) After the pool is closed a prospective score is assigned by random drawing to each square;

(5) All money paid by entrants to enter the pool less taxes is paid out as the prize or prizes to those persons holding squares assigned the winning score or scores from the subject athletic contest;

(6) The sports pool board is available for inspection by any person purchasing a chance thereon, the commission, or by any law enforcement agency upon demand at all times prior to the payment of the prize;

(7) The person or organization conducting the pool is conducting no other sports pool on the same athletic event; and

(8) The sports pool conforms to any rules and regulations of the commission applicable thereto. [1987 c 4 § 31. Formerly RCW 9.46.030(6).]

9.46.0341 Golfing sweepstakes authorized. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct, without the necessity of obtaining a permit or license to do so from the commission, golfing sweepstakes permitting wagers of money, and the same shall not constitute such gambling or lottery as otherwise prohibited in this chapter, or be subject to civil or criminal penalties thereunder, but this only when the outcome of such golfing sweepstakes is dependent upon the score, or scores, or the playing ability, or abilities, of a golfing contest between individual players or teams of such players, conducted in the following manner:

(1) Wagers are placed by buying tickets on any players in a golfing contest to "win," "place," or "show" and those holding tickets on the three winners may receive a payoff similar to the system of betting identified as parimutuel, such moneys placed as wagers to be used primarily as winners' proceeds, except moneys used to defray the expenses of such golfing sweepstakes or otherwise used to carry out the purposes of such organization; or

(2) Participants in any golfing contest(s) pay a like sum of money into a common fund on the basis of attaining a stated number of points ascertainable from the score of such participants, and those participants attaining such stated number of points share equally in the moneys in the common fund, without any percentage of such moneys going to the sponsoring organization; and

(3) Participation is limited to members of the sponsoring organization and their bona fide guests. [1987 c 4 § 32. Formerly RCW 9.46.030(7).]

9.46.0345 Bowling sweepstakes authorized. The legislature hereby authorizes bowling establishments to conduct, without the necessity of obtaining a permit or license to do so, as a commercial stimulant, a bowling activity which permits bowlers to purchase tickets from

the establishment for a predetermined and posted amount of money, which tickets are then selected by the luck of the draw and the holder of the matching ticket so drawn has an opportunity to bowl a strike and if successful receives a predetermined and posted monetary prize: *Provided*, That all sums collected by the establishment from the sale of tickets shall be returned to purchasers of tickets and no part of the proceeds shall inure to any person other than the participants winning in the game or a recognized charity. The tickets shall be sold, and accounted for, separately from all other sales of the establishment. The price of any single ticket shall not exceed one dollar. Accounting records shall be available for inspection during business hours by any person purchasing a chance thereon, by the commission or its representatives, or by any law enforcement agency. [1987 c 4 § 33. Formerly RCW 9.46.030(8).]

9.46.0351 Social card, dice games—Use of premises of charitable, nonprofit organizations. (1) The legislature hereby authorizes any bona fide charitable or nonprofit organization which is licensed pursuant to RCW 66.24.400, and its officers and employees, to allow the use of the premises, furnishings, and other facilities not gambling devices of such organization by members of the organization, and members of a chapter or unit organized under the same state, regional, or national charter or constitution, who engage as players in the following types of gambling activities only:

(a) Social card games as defined in RCW 9.46.0281 (1) through (4); and

(b) Social dice games, which shall be limited to contests of chance, the outcome of which are determined by one or more rolls of dice.

(2) Bona fide charitable or nonprofit organizations shall not be required to be licensed by the commission in order to allow use of their premises in accordance with this section. However, the following conditions must be met:

(a) No organization, corporation, or person shall collect or obtain or charge any percentage of or shall collect or obtain any portion of the money or thing of value wagered or won by any of the players: *Provided*, That a player may collect his or her winnings; and

(b) No organization, corporation, or person shall collect or obtain any money or thing of value from, or charge or impose any fee upon, any person which either enables him or her to play or results in or from his or her playing: *Provided*, That this subsection shall not preclude collection of a membership fee which is unrelated to participation in gambling activities authorized under this section. [1987 c 4 § 34. Formerly RCW 9.46.030(9).]

9.46.0355 Promotional contests of chance authorized. (1) The legislature hereby authorizes promotional contests of chance conducted in this state, or partially in this state, in which a person is required, in order to participate in the contest equally with other participants, to do only one or more of the following:

(a) Listen to or watch a television or radio program or subscribe to a cable television service;

(b) Fill out and return a coupon or entry blank or facsimile which is received through the mail, or published in a bona fide newspaper or magazine, or in a program sold in conjunction with and at a regularly scheduled sporting event, or the purchase of such newspaper, magazine, or program;

(c) Send a coupon or entry blank by United States mail to a designated address;

(d) Visit a business establishment to obtain or deposit a coupon or entry blank;

(e) Merely register, without the purchase of goods or services;

(f) Expend time, thought, attention, and energy in perusing promotional material;

(g) Place or answer a telephone call in a prescribed manner or otherwise make a prescribed response, guess, or answer;

(h) Furnish the container of a product as packaged by the manufacturer, or a particular portion thereof, but only if furnishing a plain piece of paper or card with the name of the manufacturer or product handwritten thereon is acceptable in lieu thereof; or

(i) Pay an admission fee to gain admission to any bona fide exposition, fair, or show for the display or promotion of goods, wares, or services, or any agricultural fair authorized under chapter 15.76 or 36.37 RCW, if (i) the scheme is conducted for promotional or advertising purposes, not including the promotion or advertisement of the scheme itself; and (ii) the person or organization conducting the scheme receives no portion of the admission fee either directly or indirectly and receives no other money for conducting the scheme either directly or indirectly, other than what might be received indirectly as a result of the success of the promotional or advertising aspect of the scheme.

(2) Notwithstanding any other provision of this section, where any contest of chance is conducted by or on behalf of in-state retail grocery outlets in connection with business promotions, no such in-state retail grocery outlet may conduct more than one such contest of chance during each calendar year and the period of the contest of chance and its promotion shall not extend for more than fourteen consecutive days: *Provided*, That if the sponsoring organization has more than one outlet in the state, such contests of chance must be held in all such outlets at the same time except that a sponsoring organization with more than one outlet may conduct a separate contest of chance in connection with the initial opening of any such outlet: *Provided further*, That such contests of chance may be conducted on an ongoing basis if the prizes awarded or accumulated to award do not exceed thirty dollars a day or five thousand dollars a year in the aggregate for all outlets of the sponsoring organizations. Nothing in this subsection applies to contests of chance conducted by or in connection with business promotions by manufacturers.

For purposes of this chapter, in-state retail grocery outlet includes any establishment or recognized grocery

department thereof in which more than twenty percent of the gross receipts result from the sale of food items for off-premises preparation. These food items include such products as meat, poultry, fish, bread, cereals, vegetables, fruit, dairy products, coffee, tea, cocoa, carbonated and uncarbonated beverages, candy, condiments, spices, and canned goods, and like products; but not including prepared hot foods or hot food products ready for immediate consumption.

(3) For the purposes of this chapter, radio and television broadcasting is hereby declared to be preempted by applicable federal statutes and the applicable rules of the federal communications commission. Broadcast programming, including advertising for others and station promotion, that complies with federal statutes and regulations is hereby authorized. [1987 c 4 § 35. Formerly RCW 9.46.030(10).]

9.46.0361 Turkey shoots authorized. The legislature hereby authorizes bona fide charitable or nonprofit organizations to conduct, without the necessity of obtaining a permit or license to do so from the commission, turkey shoots permitting wagers of money. Such contests shall not constitute such gambling or lottery as otherwise prohibited in this chapter, or be subject to civil or criminal penalties. Such organizations must be organized for purposes other than the conduct of turkey shoots.

Such turkey shoots shall be held in accordance with all other requirements of this chapter, other applicable laws, and rules that may be adopted by the commission. Gross revenues from all such turkey shoots held by the organization during the calendar year shall not exceed five thousand dollars. Turkey shoots conducted under this section shall meet the following requirements:

(1) The target shall be divided into one hundred or fewer equal sections, with each section constituting a chance to win. Each chance shall be offered directly to a prospective contestant for one dollar or less;

(2) The purchaser of each chance shall sign his or her name on the face of the section he or she purchases;

(3) The person shooting at the target shall not be a participant in the contest, but shall be a member of the organization conducting the contest;

(4) Participation in the contest shall be limited to members of the organization which is conducting the contest and their guests;

(5) The target shall contain the following information:

(a) Distance from the shooting position to the target;

(b) The gauge of the shotgun;

(c) The type of choke on the barrel;

(d) The size of shot that will be used; and

(e) The prize or prizes that are to be awarded in the contest;

(6) The targets, shotgun, and ammunition shall be available for inspection by any person purchasing a chance thereon, the commission, or by any law enforcement agency upon demand, at all times before the prizes are awarded;

(7) The turkey shoot shall award the prizes based upon the greatest number of shots striking a section;

(8) No turkey shoot may offer as a prize the right to advance or continue on to another turkey shoot or turkey shoot target; and

(9) Only bona fide members of the organization who are not paid for such service may participate in the management or operation of the turkey shoot, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization. [1987 c 4 § 36. Formerly RCW 9.46.030(12).]

9.46.040 Gambling commission—Members—Appointment—Vacancies, filling. There shall be a commission, known as the "Washington state gambling commission", consisting of five members appointed by the governor with the consent of the senate. The members of the commission shall be appointed within thirty days of July 16, 1973 for terms beginning July 1, 1973, and expiring as follows: One member of the commission for a term expiring July 1, 1975; one member of the commission for a term expiring July 1, 1976; one member of the commission for a term expiring July 1, 1977; one member of the commission for a term expiring July 1, 1978; and one member of the commission for a term expiring July 1, 1979; each as the governor so determines. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six year terms: *Provided*, That no member of the commission who has served a full six year term shall be eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the commission shall impair the right of the remaining member or members to act, except as in RCW 9.46.050(2) provided.

In addition to the members of the commission there shall be four ex officio members without vote from the legislature consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives; such appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first; members may be reappointed; vacancies shall be filled in the same manner as original appointments are made. Such ex officio members who shall collect data deemed essential to future legislative proposals and exchange information with the board shall be deemed engaged in legislative business while in attendance upon the business of the board and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the "gambling revolving fund" as being expenses relative to commission business. [1974 ex.s. c 155 § 12; 1974 ex.s. c 135 § 12; 1973 1st ex.s. c 218 § 4.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.050 Gambling commission—Chairman—Quorum—Meetings—Compensation and travel expenses—Bond—Removal. (1) Upon appointment of the initial membership the commission shall meet at a time and place designated by the governor and proceed to organize, electing one of such members as chairman of the commission who shall serve until July 1, 1974; thereafter a chairman shall be elected annually.

(2) A majority of the members shall constitute a quorum of the commission: *Provided*, That all actions of the commission relating to the regulation of licensing under this chapter shall require an affirmative vote by three or more members of the commission.

(3) The principal office of the commission shall be at the state capitol, and meetings shall be held at least quarterly and at such other times as may be called by the chairman or upon written request to the chairman of a majority of the commission.

(4) Members shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) Before entering upon the duties of his office, each of the members of the commission shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the commission.

(6) Any member of the commission may be removed for inefficiency, malfeasance, or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final. Removal of any member of the commission by the tribunal shall disqualify such member for reappointment. [1984 c 287 § 9; 1975-'76 2nd ex.s. c 34 § 7; 1973 1st ex.s. c 218 § 5.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

9.46.060 Gambling commission—Counsel—Audits—Payment for. (1) The attorney general shall be general counsel for the state gambling commission and shall assign such assistants as may be necessary in carrying out the purposes and provisions of this chapter, which shall include instituting and prosecuting any actions and proceedings necessary thereto.

(2) The state auditor shall audit the books, records, and affairs of the commission annually. The commission

shall pay to the state treasurer for the credit of the state auditor such funds as may be necessary to defray the costs of such audits. The commission may provide for additional audits by certified public accountants. All such audits shall be public records of the state.

The payment for legal services and audits as authorized in this section shall be paid upon authorization of the commission from moneys in the gambling revolving fund. [1973 1st ex.s. c 218 § 6.]

9.46.070 Gambling commission—Powers and duties. The commission shall have the following powers and duties:

(1) To authorize and issue licenses for a period not to exceed one year to bona fide charitable or nonprofit organizations approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said organizations to conduct bingo games, raffles, amusement games, and social card games, to utilize punch boards and pull-tabs in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter or any rules and regulations adopted pursuant thereto: *Provided*, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: *Provided further*, That the commission or director shall not issue, deny, suspend or revoke any license because of considerations of race, sex, creed, color, or national origin: *And provided further*, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(2) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization operating a business primarily engaged in the selling of items of food or drink for consumption on the premises, approved by the commission meeting the requirements of this chapter and any rules and regulations adopted pursuant thereto permitting said person, association, or organization to utilize punch boards and pull-tabs and to conduct social card games as a commercial stimulant in accordance with the provisions of this chapter and any rules and regulations adopted pursuant thereto and to revoke or suspend said licenses for violation of any provisions of this chapter and any rules and regulations adopted pursuant thereto: *Provided*, That the commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued: *Provided further*, That the commission may authorize the director to temporarily issue or suspend licenses subject to final action by the commission;

(3) To authorize and issue licenses for a period not to exceed one year to any person, association, or organization approved by the commission meeting the requirements of this chapter and meeting the requirements of any rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended, permitting said person, association, or organization to

conduct or operate amusement games in such manner and at such locations as the commission may determine;

(4) To authorize, require, and issue, for a period not to exceed one year, such licenses as the commission may by rule provide, to any person, association, or organization to engage in the selling, distributing, or otherwise supplying or in the manufacturing of devices for use within this state for those activities authorized by this chapter;

(5) To establish a schedule of annual license fees for carrying on specific gambling activities upon the premises, and for such other activities as may be licensed by the commission, which fees shall provide to the commission not less than an amount of money adequate to cover all costs incurred by the commission relative to licensing under this chapter and the enforcement by the commission of the provisions of this chapter and rules and regulations adopted pursuant thereto: *Provided*, That all licensing fees shall be submitted with an application therefor and such portion of said fee as the commission may determine, based upon its cost of processing and investigation, shall be retained by the commission upon the withdrawal or denial of any such license application as its reasonable expense for processing the application and investigation into the granting thereof: *Provided further*, That if in a particular case the basic license fee established by the commission for a particular class of license is less than the commission's actual expenses to investigate that particular application, the commission may at any time charge to that applicant such additional fees as are necessary to pay the commission for those costs. The commission may decline to proceed with its investigation and no license shall be issued until the commission has been fully paid therefor by the applicant: *And provided further*, That the commission may establish fees for the furnishing by it to licensees of identification stamps to be affixed to such devices and equipment as required by the commission and for such other special services or programs required or offered by the commission, the amount of each of these fees to be not less than is adequate to offset the cost to the commission of the stamps and of administering their dispersal to licensees or the cost of administering such other special services, requirements or programs;

(6) To prescribe the manner and method of payment of taxes, fees and penalties to be paid to or collected by the commission;

(7) To require that applications for all licenses contain such information as may be required by the commission: *Provided*, That all persons (a) having a managerial or ownership interest in any gambling activity, or the building in which any gambling activity occurs, or the equipment to be used for any gambling activity, or (b) participating as an employee in the operation of any gambling activity, shall be listed on the application for the license and the applicant shall certify on the application, under oath, that the persons named on the application are all of the persons known to have an interest in any gambling activity, building, or equipment by the person making such application: *Provided further*, That the commission may require fingerprinting and

background checks on any persons seeking licenses under this chapter or of any person holding an interest in any gambling activity, building, or equipment to be used therefor, or of any person participating as an employee in the operation of any gambling activity;

(8) To require that any license holder maintain records as directed by the commission and submit such reports as the commission may deem necessary;

(9) To require that all income from bingo games, raffles, and amusement games be recorded and reported as established by rule or regulation of the commission to the extent deemed necessary by considering the scope and character of the gambling activity in such a manner that will disclose gross income from any gambling activity, amounts received from each player, the nature and value of prizes, and the fact of distributions of such prizes to the winners thereof;

(10) To regulate and establish maximum limitations on income derived from bingo: *Provided*, That in establishing limitations pursuant to this subsection the commission shall take into account (i) the nature, character, and scope of the activities of the licensee; (ii) the source of all other income of the licensee; and (iii) the percentage or extent to which income derived from bingo is used for charitable, as distinguished from nonprofit, purposes;

(11) To regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter, including but not limited to, the extent of wager, money, or other thing of value which may be wagered or contributed or won by a player in any such activities;

(12) To regulate the collection of and the accounting for the fee which may be imposed by an organization, corporation or person licensed to conduct a social card game on a person desiring to become a player in a social card game in accordance with RCW 9.46.0281(4);

(13) To cooperate with and secure the cooperation of county, city, and other local or state agencies in investigating any matter within the scope of its duties and responsibilities;

(14) In accordance with RCW 9.46.080, to adopt such rules and regulations as are deemed necessary to carry out the purposes and provisions of this chapter. All rules and regulations shall be adopted pursuant to the administrative procedure act, chapter 34.04 RCW;

(15) To set forth for the perusal of counties, city-counties, cities and towns, model ordinances by which any legislative authority thereof may enter into the taxing of any gambling activity authorized by this chapter;

(16) To establish and regulate a maximum limit on salaries or wages which may be paid to persons employed in connection with activities conducted by bona fide charitable or nonprofit organizations and authorized by this chapter, where payment of such persons is allowed, and to regulate and establish maximum limits for other expenses in connection with such authorized activities, including but not limited to rent or lease payments.

In establishing these maximum limits the commission shall take into account the amount of income received, or expected to be received, from the class of activities to

which the limits will apply and the amount of money the games could generate for authorized charitable or nonprofit purposes absent such expenses. The commission may also take into account, in its discretion, other factors, including but not limited to, the local prevailing wage scale and whether charitable purposes are benefited by the activities;

(17) To authorize, require, and issue for a period not to exceed one year such licenses or permits, for which the commission may by rule provide, to any person to work for any operator of any gambling activity authorized by this chapter in connection with that activity, or any manufacturer, supplier, or distributor of devices for those activities in connection with such business. The commission shall not require that persons working solely as volunteers in an authorized activity conducted by a bona fide charitable or bona fide nonprofit organization, who receive no compensation of any kind for any purpose from that organization, and who have no managerial or supervisory responsibility in connection with that activity, be licensed to do such work. The commission may require that licensees employing such unlicensed volunteers submit to the commission periodically a list of the names, addresses, and dates of birth of the volunteers. If any volunteer is not approved by the commission, the commission may require that the licensee not allow that person to work in connection with the licensed activity;

(18) To publish and make available at the office of the commission or elsewhere to anyone requesting it a list of the commission licensees, including the name, address, type of license, and license number of each licensee;

(19) To establish guidelines for determining what constitutes active membership in bona fide nonprofit or charitable organizations for the purposes of this chapter; and

(20) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1987 c 4 § 38; 1981 c 139 § 3. Prior: 1977 ex.s. c 326 § 3; 1977 ex.s. c 76 § 2; 1975-'76 2nd ex.s. c 87 § 4; 1975 1st ex.s. c 259 § 4; 1974 ex.s. c 155 § 4; 1974 ex.s. c 135 § 4; 1973 2nd ex.s. c 41 § 4; 1973 1st ex.s. c 218 § 7.]

Severability—1981 c 139: "If any provision of this amendatory 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." [1981 c 139 § 19.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

Enforcement—Commission as a law enforcement agency: RCW 9.46.210.

9.46.075 Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable. The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties

imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(2) Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission;

(3) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;

(5) Denies the commission or its authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted or who fails promptly to produce for inspection or audit any book, record, document or item required by law or commission rule;

(6) Shall fail to display its license on the premises where the licensed activity is conducted at all times during the operation of the licensed activity;

(7) Makes a misrepresentation of, or fails to disclose, a material fact to the commission;

(8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter;

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section: *Provided*, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal;

(10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

(11) Is a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to be inimical to the policy of this chapter or

to the proper operation of the authorized gambling or related activities in this state. For the purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel shall be defined as any group of persons who operate together as career offenders.

For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license the gambling commission may consider any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1981 c 139 § 4; 1975 1st ex.s. c 166 § 12.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.077 Gambling commission—Vacation of certain suspensions upon payment of monetary penalty. The commission, when suspending any license for a period of thirty days or less, may further provide in the order of suspension that such suspension shall be vacated upon payment to the commission of a monetary penalty in an amount then fixed by the commission. [1981 c 139 § 5.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.080 Gambling commission—Administrator—Staff—Rules and regulations—Service contracts. The commission shall employ a full time director, who shall be the administrator for the commission in carrying out its powers and duties and who shall issue rules and regulations adopted by the commission governing the activities authorized hereunder and shall supervise commission employees in carrying out the purposes and provisions of this chapter. In addition, the director shall employ a deputy director, two assistant directors, together with such investigators and enforcement officers and such staff as the commission determines is necessary to carry out the purposes and provisions of this chapter. The director, the deputy director, both assistant directors, and personnel occupying positions requiring the performing of undercover investigative work shall be exempt from the provisions of chapter 41.06 RCW, as now law or hereafter amended. Neither the director nor any commission employee working therefor shall be an officer or manager of any bona fide charitable or bona fide nonprofit organization, or of any organization which conducts gambling activity in this state.

The director, subject to the approval of the commission, is authorized to enter into agreements on behalf of the commission for mutual assistance and services, based upon actual costs, with any state or federal agency or with any city, town, or county, and such state or local agency is authorized to enter into such an agreement with the commission. If a needed service is not available from another agency of state government within a reasonable time, the director may obtain that service from

private industry. [1981 c 139 § 6; 1977 ex.s. c 326 § 4; 1974 ex.s. c 155 § 7; 1974 ex.s. c 135 § 7; 1973 1st ex.s. c 218 § 8.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.085 Gambling commission—Members and employees—Activities prohibited. A member or employee of the gambling commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any gambling activity regulated by the commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of [a] gambling activity, or the provision of independent consultant services in connection with a gambling activity. [1986 c 4 § 1.]

9.46.090 Gambling commission—Reports. Subject to RCW 40.07.040, the commission shall, from time to time, make reports to the governor and the legislature covering such matters in connection with this chapter as the governor and the legislature may require. These reports shall be public documents and contain such general information and remarks as the commission deems pertinent thereto and any information requested by either the governor or members of the legislature: *Provided*, That the commission appointed pursuant to RCW 9.46.040 may conduct a thorough study of the types of gambling activity permitted and the types of gambling activity prohibited by this chapter and may make recommendations to the legislature as to: (1) Gambling activity that ought to be permitted; (2) gambling activity that ought to be prohibited; (3) the types of licenses and permits that ought to be required; (4) the type and amount of tax that ought to be applied to each type of permitted gambling activity; (5) any changes which may be made to the law of this state which further the purposes and policies set forth in RCW 9.46.010 as now law or hereafter amended; and (6) any other matter that the commission may deem appropriate. Members of the commission and its staff may contact the legislature, or any of its members, at any time, to advise it of recommendations of the commission. [1987 c 505 § 3; 1981 c 139 § 7; 1977 c 75 § 4; 1975 1st ex.s. c 166 § 4; 1973 1st ex.s. c 218 § 9.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1975 1st ex.s. c 166: "If any provision of this 1975 amendatory 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." [1975 1st ex.s. c 166 § 15.]

9.46.095 Gambling commission—Proceedings against, jurisdiction—Immunity from liability. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the commission or any

member thereof for anything done or omitted to be done in or arising out of the performance of his or her duties under this title: *Provided*, That an appeal from a contested case of a final decision of the commission to deny, suspend or revoke a license shall be governed by chapter 34.04 RCW.

Neither the commission nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done, or omitted to be done, by the commission or any member of the commission, or any employee of the commission, in the performance of his or her duties and in the administration of this title. [1981 c 139 § 17.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.100 Gambling revolving fund—Created—Receipts—Disbursements—Use. There is hereby created a fund to be known as the "gambling revolving fund" which shall consist of all moneys receivable for licensing, penalties, forfeitures, and all other moneys, income, or revenue received by the commission. The state treasurer shall be custodian of the fund. All moneys received by the commission or any employee thereof, except for change funds and an amount of petty cash as fixed by rule or regulation of the commission, shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the gambling revolving fund. Disbursements from the revolving fund shall be on authorization of the commission or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the gambling revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. All expenses relative to commission business, including but not limited to salaries and expenses of the director and other commission employees shall be paid from the gambling revolving fund.

The office of financial management may direct the state treasurer to loan to the general fund an amount not to exceed \$1,400,000 from the gambling revolving fund for the 1983–85 fiscal biennium. [1985 c 405 § 505; 1977 ex.s. c 326 § 5; 1973 1st ex.s. c 218 § 10.]

Severability—1985 c 405: "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." [1985 c 405 § 510.]

9.46.110 Taxation of gambling activities—Limitations—Restrictions on punch boards and pull-tabs. The legislative authority of any county, city-county, city, or town, by local law and ordinance, and in accordance with the provisions of this chapter and rules and regulations promulgated hereunder, may provide for the taxing of any gambling activity authorized by this chapter within its jurisdiction, the tax receipts to go to the county, city-county, city, or town so taxing the same: *Provided*, That any such tax imposed by a county alone shall not apply to any gambling activity within a city or

town located therein but the tax rate established by a county, if any, shall constitute the tax rate throughout the unincorporated areas of such county: *Provided further*, That (1) punch boards and pull-tabs, chances on which shall only be sold to adults, which shall have a fifty cent limit on a single chance thereon, shall be taxed on a basis which shall reflect only the gross receipts from such punch boards and pull-tabs; and (2) no punch board or pull-tab may award as a prize upon a winning number or symbol being drawn the opportunity of taking a chance upon any other punch board or pull-tab; and (3) all prizes for punch boards and pull-tabs must be on display within the immediate area of the premises wherein any such punch board or pull-tab is located and upon a winning number or symbol being drawn, such prize must be immediately removed therefrom, or such omission shall be deemed a fraud for the purposes of this chapter; and (4) when any person shall win over twenty dollars in money or merchandise from any punch board or pull-tab, every licensee hereunder shall keep a public record thereof for at least ninety days thereafter containing such information as the commission shall deem necessary: *And provided further*, That taxation of bingo and raffles shall never be in an amount greater than ten percent of the gross revenue received therefrom less the amount paid for or as prizes. Taxation of amusement games shall only be in an amount sufficient to pay the actual costs of enforcement of the provisions of this chapter by the county, city or town law enforcement agency and in no event shall such taxation exceed two percent of the gross revenue therefrom less the amount paid for as prizes: *Provided further*, That no tax shall be imposed under the authority of this chapter on bingo, raffles or amusement games when such activities or any combination thereof are conducted by any bona fide charitable or nonprofit organization as defined in this chapter, which organization has no paid operating or management personnel and has gross income from bingo, raffles or amusement games, or any combination thereof, not exceeding five thousand dollars per year less the amount paid for as prizes. Taxation of punch boards and pull-tabs shall not exceed five percent of gross receipts, nor shall taxation of social card games exceed twenty percent of the gross revenue from such games. [1987 c 4 § 39. Prior: 1985 c 468 § 2; 1985 c 172 § 1; 1981 c 139 § 8; 1977 ex.s. c 198 § 1; 1974 ex.s. c 155 § 8; 1974 ex.s. c 135 § 8; 1973 1st ex.s. c 218 § 11.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.113 Taxation of gambling activities—Disbursement. Any county, city or town which collects a tax on gambling activities authorized pursuant to RCW 9.46.110 shall use the revenue from such tax primarily for the purpose of enforcement of the provisions of this chapter by the county, city or town law enforcement agency. [1975 1st ex.s. c 166 § 11.]

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.116 Fees on pull tab and punchboard sales. The commission shall charge fees or increased fees on pull tabs sold over-the-counter and on sales from punchboards and pull tab devices at levels necessary to assure that the increased revenues are equal or greater to the amount of revenue lost by removing the special tax on coin-operated gambling devices by the 1984 repeal of RCW 9.46.115. [1985 c 7 § 2; 1984 c 135 § 2.]

Effective date—1984 c 135: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1984." [1984 c 135 § 3.]

9.46.120 Restrictions as to management or operation personnel—Restriction as to leased premises. (1) Except in the case of an agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a member of a bona fide charitable or nonprofit organization (and their employees) or any other person, association or organization (and their employees) approved by the commission, shall take any part in the management or operation of any gambling activity authorized under this chapter, and no person who takes any part in the management or operation of any such gambling activity shall take any part in the management or operation of any gambling activity conducted by any other organization or any other branch of the same organization, unless approved by the commission, and no part of the proceeds thereof shall inure to the benefit of any person other than the organization conducting such gambling activities or if such gambling activities be for the charitable benefit of any specific persons designated in the application for a license, then only for such specific persons as so designated.

(2) No bona fide charitable or nonprofit organization or any other person, association or organization shall conduct any gambling activity authorized under this chapter in any leased premises if rental for such premises is unreasonable or to be paid, wholly or partly, on the basis of a percentage of the receipts or profits derived from such gambling activity. [1987 c 4 § 40; 1973 1st ex.s. c 218 § 12.]

9.46.130 Inspection and audit of premises, paraphernalia, books, and records—Reports for the commission. The premises and paraphernalia, and all the books and records of any person, association or organization conducting gambling activities authorized under this chapter and any person, association or organization receiving profits therefrom or having any interest therein shall be subject to inspection and audit at any reasonable time, with or without notice, upon demand, by the commission or its designee, the attorney general or his designee, the chief of the Washington state patrol or his designee or the prosecuting attorney, sheriff or director of public safety or their designees of the county wherein located, or the chief of police or his designee of any city or town in which said organization is located, for the purpose of determining compliance or noncompliance with the provisions of this chapter and any rules or regulations or local ordinances adopted pursuant thereto. A

reasonable time for the purpose of this section shall be: (1) If the items or records to be inspected or audited are located anywhere upon a premises any portion of which is regularly open to the public or members and guests, then at any time when the premises are so open, or at which they are usually open; or (2) if the items or records to be inspected or audited are not located upon a premises set out in subsection (1) above, then any time between the hours of 8:00 a.m. and 9:00 p.m., Monday through Friday.

The commission shall be provided at such reasonable intervals as the commission shall determine with a report, under oath, detailing all receipts and disbursements in connection with such gambling activities together with such other reasonable information as required in order to determine whether such activities comply with the purposes of this chapter or any local ordinances relating thereto. [1981 c 139 § 10; 1975 1st ex.s. c 166 § 7; 1973 1st ex.s. c 218 § 13.]

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.140 Gambling commission—Investigations—Inspections—Hearing and subpoena power—Administrative law judges. (1) The commission or its authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the commission or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the commission's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, who may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in RCW 34.04.090 (6) and (8), 34.04.100, and 34.04.105.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the administrative procedure act, chapter 34.04 RCW. [1981 c 67 § 16; 1977 ex.s. c 326 § 7; 1975 1st ex.s. c 166 § 8; 1973 1st ex.s. c 218 § 14.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.150 Injunctions—Voiding of licenses, permits, or certificates. (1) Any activity conducted in violation of any provision of this chapter may be enjoined in an action commenced by the commission through the attorney general or by the prosecuting attorney or legal counsel of any city or town in which the prohibited activity may occur.

(2) When a violation of any provision of this chapter or any rule or regulation adopted pursuant hereto has occurred on any property or premises for which one or more licenses, permits, or certificates issued by this state, or any political subdivision or public agency thereof are in effect, all such licenses, permits and certificates may be voided and no license, permit, or certificate so voided shall be issued or reissued for such property or premises for a period of up to sixty days thereafter. [1973 1st ex.s. c 218 § 15.]

9.46.153 Applicants and licensees—Responsibilities and duties—Waiver of liability—Investigation statement as privileged. (1) It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted;

(2) All applicants and licensees shall consent to inspections, searches and seizures and the supplying of handwriting examples as authorized by this chapter and rules adopted hereunder;

(3) All licensees, and persons having any interest in licensees, including but not limited to employees and agents of licensees, and other persons required to be qualified under this chapter or rules of the commission shall have a duty to inform the commission or its staff of any action or omission which they believe would constitute a violation of this chapter or rules adopted pursuant thereto. No person who so informs the commission or the staff shall be discriminated against by an applicant or licensee because of the supplying of such information;

(4) All applicants, licensees, persons who are operators or directors thereof and persons who otherwise have

a substantial interest therein shall have the continuing duty to provide any assistance or information required by the commission and to investigations conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee or officer or director thereof or person with a substantial interest therein, refuses to comply, the applicant or licensee may be denied or revoked by the commission;

(5) All applicants and licensees shall waive any and all liability as to the state of Washington, its agencies, employees and agents for any damages resulting from any disclosure or publication in any manner, other than a wilfully unlawful disclosure or publication, of any information acquired by the commission during its licensing or other investigations or inquiries or hearings;

(6) Each applicant or licensee may be photographed for investigative and identification purposes in accordance with rules of the commission;

(7) An application to receive a license under this chapter or rules adopted pursuant thereto constitutes a request for determination of the applicant's and those person's with an interest in the applicant, general character, integrity and ability to engage or participate in, or be associated with, gambling or related activities impacting this state. Any written or oral statement made in the course of an official investigation, proceeding or process of the commission by any member, employee or agent thereof or by any witness, testifying under oath, which is relevant to the investigation, proceeding or process, is absolutely privileged and shall not impose any liability for slander, libel or defamation, or constitute any grounds for recovery in any civil action. [1981 c 139 § 14.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.155 Applicants and licensees—Bribes to public officials, employees, agents—Penalty. No applicant or licensee shall give or provide, or offer to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any of its agencies or political subdivisions, any compensation or reward, or share of the money or property paid or received through gambling activities, in consideration for obtaining any license, authorization, permission or privilege to participate in any gaming operations except as authorized by this chapter or rules adopted pursuant thereto. Violation of this section shall be a felony for which a person, upon conviction, shall be punished by imprisonment for not more than five years or a fine of not more than one hundred thousand dollars, or both. [1981 c 139 § 15.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.158 Applicants, licensees, operators—Commission approval for hiring certain persons. No applicant for a license from, nor licensee of, the commission, nor any operator of any gambling activity, shall, without advance approval of the commission, knowingly permit any person to participate in the management or operation of any activity for which a license from the commission is

required or which is otherwise authorized by this chapter if that person:

(1) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; or

(2) Has violated, failed, or refused to comply with provisions, requirements, conditions, limitations or duties imposed by this chapter, and any amendments thereto, or any rules adopted by the commission pursuant thereto, or has permitted, aided, abetted, caused, or conspired with another to cause, any person to violate any of the provisions of this chapter or rules of the commission. [1981 c 139 § 18.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.160 Conducting activity without license as violation—Penalties. Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission shall be guilty of a felony and upon conviction shall be punished by imprisonment for not more than five years or by a fine of not more than one hundred thousand dollars, or both. If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [1975 1st ex.s. c 166 § 9; 1973 1st ex.s. c 218 § 16.]

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.170 False or misleading entries or statements, refusal to produce records, as violations—Penalty. Whoever, in any application for a license or in any book or record required to be maintained by the commission or in any report required to be submitted to the commission, shall make any false or misleading statement, or make any false or misleading entry or wilfully fail to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection by the commission, or its designee, any book, record, or document required to be maintained or made by federal or state law, shall be guilty of a gross misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both. [1973 1st ex.s. c 218 § 17.]

9.46.180 Causing person to violate chapter as violation—Penalty. Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter shall be guilty of a felony and upon conviction shall be punished by imprisonment for not more than five years or a fine

of not more than one hundred thousand dollars, or both. [1977 ex.s. c 326 § 8; 1973 1st ex.s. c 218 § 18.]

9.46.185 Causing person to violate rule or regulation as violation—Penalty. Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule or regulation adopted pursuant to this chapter shall be guilty of a gross misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both. [1977 ex.s. c 326 § 9.]

9.46.190 Violations relating to fraud or deceit—Penalty. Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

(1) Employ any device, scheme, or artifice to defraud; or

(2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or

(3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;

Shall be guilty of a gross misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both. [1977 ex.s. c 326 § 10; 1973 1st ex.s. c 218 § 19.]

9.46.192 Cities and towns—Ordinance enacting certain sections of chapter—Limitations—Penalties. Every city or town is authorized to enact as an ordinance of that city or town any or all of the sections of this chapter the violation of which constitutes a misdemeanor or gross misdemeanor. The city or town may not modify the language of any section of this chapter in enacting such section except as necessary to put the section in the proper form of an ordinance or to provide for a sentence [to] be served in the appropriate detention facility. The ordinance must provide for the same maximum penalty for its violation as may be imposed under the section in this chapter. [1977 ex.s. c 326 § 11.]

9.46.193 Cities and towns—Ordinance adopting certain sections of chapter—Jurisdiction of courts. District courts operating under the provisions of chapters 3.30 through 3.74 RCW, except municipal departments of such courts operating under chapter 3.46 RCW and municipal courts operating under chapter 3.50 RCW, shall have concurrent jurisdiction with the superior court to hear, try, and determine misdemeanor and gross misdemeanor violations of this chapter and violations of any ordinance passed under authority of this chapter by any city or town.

Municipal courts operating under chapters 35.20 or 3.50 RCW and municipal departments of the district court operating under chapter 3.46 RCW, shall have concurrent jurisdiction with the superior court to hear, try, and determine violations of any ordinance passed

under authority of this chapter by the city or town in which the court is located.

Notwithstanding any other provision of law, each of these courts shall have the jurisdiction and power to impose up to the maximum penalties provided for the violation of the ordinances adopted under the authority of this chapter. Review of the judgments of these courts shall be as provided in other criminal actions. [1977 ex.s. c 326 § 12.]

9.46.195 Obstruction of public servant in administration or enforcement as violation—Penalty. No person shall intentionally obstruct or attempt to obstruct a public servant in the administration or enforcement of this chapter by using or threatening to use physical force or by means of any unlawful act. Any person who violates this section shall be guilty of a misdemeanor. [1974 ex.s. c 155 § 11; 1974 ex.s. c 135 § 11.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.196 Defrauding or cheating other participant or operator as violation—Causing another to do so as violation—Penalty. No person participating in a gambling activity shall in the course of such participation, directly or indirectly:

(1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;

(2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;

(3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or

(4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section.

Any person violating this section shall be guilty of a gross misdemeanor and upon conviction shall be punished by imprisonment in the county jail for not more than one year or by a fine of not more than five thousand dollars, or both. [1977 ex.s. c 326 § 13.]

9.46.198 Working in gambling activity without license as violation—Penalty. Any person who works as an employee or agent or in a similar capacity for another person in connection with the operation of an activity for which a license is required under this chapter or by commission rule without having obtained the applicable license required by the commission under *RCW 9.46.070(16) shall be guilty of a gross misdemeanor and shall, upon conviction, be punished by not more than one year in the county jail or a fine of not more than five thousand dollars, or both. [1977 ex.s. c 326 § 14.]

*Reviser's note: The reference to RCW 9.46.070(16) is to that section as amended by 1977 ex.s. c 326 § 3.

9.46.200 Action for money damages due to violations—Interest—Attorneys' fees—Evidence for

exoneration. In addition to any other penalty provided for in this chapter, every person, directly or indirectly controlling the operation of any gambling activity authorized by this chapter, including a director, officer, and/or manager of any association, organization or corporation conducting the same, whether charitable, non-profit, or profit, shall be liable, jointly and severally, for money damages suffered by any person because of any violation of this chapter, together with interest on any such amount of money damages at six percent per annum from the date of the loss, and reasonable attorneys' fees: *Provided*, That if any such director, officer, and/or manager did not know any such violation was taking place and had taken all reasonable care to prevent any such violation from taking place, and if such director, officer and/or manager shall establish by a preponderance of the evidence that he did not have such knowledge and that he had exercised all reasonable care to prevent the violations he shall not be liable hereunder. Any civil action under this section may be considered a class action. [1987 c 4 § 41; 1974 ex.s. c 155 § 10; 1974 ex.s. c 135 § 10; 1973 1st ex.s. c 218 § 20.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.210 Enforcement—Commission as a law enforcement agency. (1) It shall be the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter.

(2) In addition to the authority granted by subsection (1) of this section law enforcement agencies of cities and counties shall investigate and report to the commission all violations of the provisions of this chapter and of the rules of the commission found by them and shall assist the commission in any of its investigations and proceedings respecting any such violations. Such law enforcement agencies shall not be deemed agents of the commission.

(3) In addition to its other powers and duties, the commission shall have the power to enforce the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, both assistant directors, and each of the commission's investigators, enforcement officers, and inspectors shall have the power, under the supervision of the commission, to enforce the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it

may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a warrant, any person or persons found in the act of violating any of the penal provisions of chapter 218, Laws of 1973 1st ex. sess. and as it may be amended, and the penal laws of this state relating to the conduct of or participation in gambling activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth above, the commission shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this chapter, as now law or hereafter amended, and to obtain information from and provide information to all other law enforcement agencies. [1981 c 139 § 11; 1977 ex.s. c 326 § 15; 1975 1st ex.s. c 166 § 10; 1974 ex.s. c 155 § 9; 1974 ex.s. c 135 § 9; 1973 1st ex.s. c 218 § 21.]

Reviser's note: For codification of 1973 1st ex.s. c 218 see note to RCW 9.46.010. Through the 1974 ex.s., the contents of chapter 9.46 RCW derive either from 1973 1st ex.s. c 218, amend the session law chapter, or have been specifically added to the chapter.

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.220 Professional gambling as violation—Penalty. Whoever engages in professional gambling, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling, shall be guilty of a felony and fined not more than one hundred thousand dollars or imprisoned not more than five years or both: *Provided, however*, That this section shall not apply to those activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. [1987 c 4 § 42; 1973 1st ex.s. c 218 § 22.]

9.46.225 Professional gambling—Penalties not applicable to authorized activities. The penalties provided for professional gambling in this chapter shall not apply to the activities authorized by this chapter when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations of the commission. [1987 c 4 § 37. Formerly RCW 9.46.030(11).]

9.46.230 Seizure and disposition of gambling devices—Owning, buying, selling, etc., gambling devices or records—Penalties. (1) All gambling devices as defined in this chapter are common nuisances and shall be subject to seizure, immediately upon detection by any peace officer, and to confiscation and destruction by order of a superior or district court, except when in the possession of officers enforcing this chapter.

(2) No property right in any gambling device shall exist or be recognized in any person, except the possessory right of officers enforcing this chapter.

(3) All furnishings, fixtures, equipment, and stock, including without limitation furnishings and fixtures adaptable to nongambling uses and equipment and stock for printing, recording, computing, transporting, or safekeeping, used in connection with professional gambling or maintaining a gambling premises, and all money or other things of value at stake or displayed in or in connection with professional gambling or any gambling device used therein, shall be subject to seizure, immediately upon detection, by any peace officer, and unless good cause is shown to the contrary by the owner, shall be forfeited to the state or political subdivision by which seized by order of a court having jurisdiction, for disposition by public auction or as otherwise provided by law. Bona fide liens against property so forfeited, on good cause shown by the lienor, shall be transferred from the property to the proceeds of the sale of the property. Forfeit moneys and other proceeds realized from the enforcement of this subsection shall be paid into the general fund of the state if the property was seized by officers thereof or to the political subdivision or other public agency, if any, whose officers made the seizure, except as otherwise provided by law. This subsection shall not apply to such items which are actually being used by, or being held for use by, a person licensed by the commission or who is otherwise authorized by this chapter or by commission rule to conduct gambling activities without a license in connection with gambling activities authorized by this section when:

(a) The person is acting in conformance with the provisions of chapter 9.46 RCW, as now or hereafter amended, and the rules and regulations adopted pursuant thereto; and

(b) The items are of the type and kind traditionally and usually employed in connection with the particular activity. Nor shall this subsection apply to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto.

(4) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs, or transports any gambling device or offers or solicits any interest therein, whether through an agent or employee or otherwise, shall be guilty of a felony and fined not more than one hundred thousand dollars or imprisoned not more than five years or both: *Provided, however,* That this subsection shall not apply to persons licensed by the commission, or who are otherwise authorized by this chapter, or by commission rule, to conduct gambling activities without a license, respecting devices which are to be used, or are being used, solely in that activity for which the license was issued, or for which the person has been otherwise authorized when:

(a) The person is acting in conformance with the provisions of chapter 9.46 RCW, as now or hereafter

amended, and the rules and regulations adopted pursuant thereto; and

(b) The devices are a type and kind traditionally and usually employed in connection with the particular activity. Nor shall this subsection apply to any act or acts by such persons in furtherance of the activity for which the license was issued, or for which the person is authorized, when such activity is conducted in compliance with the provisions of this chapter, as now or hereafter amended, and in accordance with the rules and regulations adopted pursuant thereto. Subsection (2) of this section shall have no application in the enforcement of this subsection. In the enforcement of this subsection direct possession of any such gambling device shall be presumed to be knowing possession thereof.

(5) Whoever knowingly prints, makes, possesses, stores, or transports any gambling record, or buys, sells, offers, or solicits any interest therein, whether through an agent or employee or otherwise, shall be guilty of a gross misdemeanor: *Provided, however,* That this subsection shall not apply to records relating to and kept for activities authorized by this chapter when the records are of the type and kind traditionally and usually employed in connection with the particular activity. Nor shall this subsection apply to any act or acts in furtherance of such activities when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. In the enforcement of this subsection direct possession of any such gambling record shall be presumed to be knowing possession thereof. [1987 c 202 § 139; 1987 c 4 § 43; 1981 c 139 § 12; 1977 ex.s. c 326 § 16; 1974 ex.s. c 155 § 5; 1974 ex.s. c 135 § 5; 1973 1st ex.s. c 218 § 23.]

Reviser's note: This section was amended by 1987 c 4 § 43 and by 1987 c 202 § 139, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—1981 c 139: See note following RCW 9.46.070.

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.235 Slot machines, antique—Defenses concerning—Presumption created. (1) For purposes of a prosecution under RCW 9.46.230(4) or a seizure, confiscation, or destruction order under RCW 9.46.230(1), it shall be a defense that the gambling device involved is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or defendant's possession. Operation of an antique slot machine shall be only by free play or with coins provided at no cost by the owner. No slot machine, having been seized under this chapter, may be altered, destroyed, or disposed of without affording the owner thereof an opportunity to present a defense under this section. If the defense is applicable, the antique slot machine shall be returned to the owner or defendant, as the court may direct.

(2) RCW 9.46.230(2) shall have no application to any antique slot machine that has not been operated for gambling purposes while in the owner's possession.

(3) For the purposes of this section, a slot machine shall be conclusively presumed to be an antique slot machine if it is at least twenty-five years old. [1987 c 191 § 1; 1977 ex.s. c 165 § 1.]

9.46.240 Gambling information, transmitting or receiving as violation—Penalty. Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be guilty of a gross misdemeanor: *Provided, however,* That this section shall not apply to such information transmitted or received or equipment installed or maintained relating to activities authorized by this chapter or to any act or acts in furtherance thereof when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. [1987 c 4 § 44; 1973 1st ex.s. c 218 § 24.]

9.46.250 Gambling property or premises—Common nuisances, abatement—Termination of mortgage, contract, or leasehold interests, licenses—Enforcement. (1) All gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by law. The plaintiff in any action brought under this subsection against any gambling premises, need not show special injury and may, in the discretion of the court, be relieved of all requirements as to giving security.

(2) When any property or premise held under a mortgage, contract or leasehold is determined by a court having jurisdiction to be a gambling premises, all rights and interests of the holder therein shall terminate and the owner shall be entitled to immediate possession at his election: *Provided, however,* That this subsection shall not apply to those premises in which activities authorized by this chapter or any act or acts in furtherance thereof are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto.

(3) When any property or premises for which one or more licenses issued by the commission are in effect, is determined by a court having jurisdiction to be a gambling premise, all such licenses may be voided and no longer in effect, and no license so voided shall be issued or reissued for such property or premises for a period of up to sixty days thereafter. Enforcement of this subsection shall be the duty of all peace officers and all taxing and licensing officials of this state and its political subdivisions and other public agencies. This subsection shall not apply to property or premises in which activities authorized by this chapter, or any act or acts in furtherance thereof, are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. [1987 c 4 § 45; 1973 1st ex.s. c 218 § 25.]

9.46.260 Proof of possession as evidence of knowledge of its character. Proof of possession of any device

used for professional gambling or any record relating to professional gambling specified in RCW 9.46.230 is prima facie evidence of possession thereof with knowledge of its character or contents. [1973 1st ex.s. c 218 § 26.]

9.46.270 Chapter as exclusive authority for taxation of gambling activities. This chapter shall constitute the exclusive legislative authority for the taxing by any city, town, city-county or county of any gambling activity and its application shall be strictly construed to those activities herein permitted and to those persons, associations or organizations herein permitted to engage therein. [1973 1st ex.s. c 218 § 27.]

9.46.285 Chapter as exclusive authority for licensing and regulation of gambling activity. This chapter constitutes the exclusive legislative authority for the licensing and regulation of any gambling activity and the state preempts such licensing and regulatory functions, except as to the powers and duties of any city, town, city-county, or county which are specifically set forth in this chapter. Any ordinance, resolution, or other legislative act by any city, town, city-county, or county relating to gambling in existence on September 27, 1973 shall be as of that date null and void and of no effect. Any such city, town, city-county, or county may thereafter enact only such local law as is consistent with the powers and duties expressly granted to and imposed upon it by chapter 9.46 RCW and which is not in conflict with that chapter or with the rules of the commission. [1973 2nd ex.s. c 41 § 8.]

9.46.291 Chapter not applicable to state lottery. The provisions of this chapter shall not apply to the conducting, operating, participating, or selling or purchasing of tickets or shares in the "lottery" or "state lottery" as defined in RCW 67.70.010 when such conducting, operating, participating, or selling or purchasing is in conformity to the provisions of chapter 67.70 RCW and to the rules adopted thereunder. [1982 2nd ex.s. c 7 § 39.]

Construction—Severability—1982 2nd ex.s. c 7: See RCW 67.70.902 and 67.70.903.

9.46.293 Fishing derbies exempted. Any fishing derby, defined under the provisions of *section 1(7) of this 1975 amendatory act, shall not be subject to any other provisions of **this 1975 amendatory act or to any rules or regulations of the commission. [1975 1st ex.s. c 166 § 13.]

Reviser's note: *(1) "section 1(7) of this 1975 amendatory act" [1975 1st ex.s. c 166 § 1(7)], including the remainder of section 1, was vetoed by the governor.

** (2) "this 1975 amendatory act" [1975 1st ex.s. c 166] consisted of RCW 9.46.075, 9.46.113, and 9.46.293 and amendments to RCW 9.46.090, 9.46.130, 9.46.140, 9.46.160, and 9.46.210.

Severability—1975 1st ex.s. c 166: See note following RCW 9.46.090.

9.46.295 Licenses as legal authority to engage in activities for which issued—Exception. Any license to engage in any of the gambling activities authorized by

this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued. [1974 ex.s. c 155 § 6; 1974 ex.s. c 135 § 6.]

Severability—1974 ex.s. c 155: See note following RCW 9.46.010.

9.46.300 Licenses and reports—Public inspection—Exceptions and requirements—Charges. All applications for licenses made to the commission, with the exception of any portions of the applications describing the arrest or conviction record of any person, and all reports required by the commission to be filed by its licensees on a periodic basis concerning the operation of the licensed activity or concerning any organization, association, or business in connection with which a licensed activity is operated, in the commission files, shall be open to public inspection at the commission's offices upon a prior written request of the commission. The staff of the commission may decline to allow an inspection until such time as the inspection will not unduly interfere with the other duties of the staff. The commission may charge the person making a request for an inspection an amount necessary to offset the costs to the commission of providing the inspection and copies of any requested documents. [1977 ex.s. c 326 § 17.]

9.46.310 Licenses for manufacture, sale, distribution, or supply of gambling devices. No person shall manufacture, and no person shall sell, distribute, furnish or supply to any other person, any gambling device, including but not limited to punchboards and pull tabs, in this state, or for use within this state, without first obtaining a license to do so from the commission under the provisions of this chapter.

Such licenses shall not be issued by the commission except respecting devices which are designed and permitted for use in connection with activities authorized under this chapter: *Provided*, That this requirement for licensure shall apply only insofar as the commission has adopted, or may adopt, rules implementing it as to particular categories of gambling devices and related equipment. [1981 c 139 § 13.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.350 Civil action to collect fees, interest, penalties, or tax—Writ of attachment—Records as evidence. At any time within five years after any amount of fees, interest, penalties, or tax which is imposed pursuant to this chapter, or rules adopted pursuant thereto, shall become due and payable, the attorney general, on behalf of the commission, may bring a civil action in the courts of this state, or any other state, or of the United States, to collect the amount delinquent, together with penalties and interest: *Provided*, That where the tax is one imposed by a county, city or town under RCW 9.46.110,

any such action shall be brought by that county, city or town on its own behalf. An action may be brought whether or not the person owing the amount is at such time a licensee pursuant to the provisions of this chapter.

If such an action is brought in the courts of this state, a writ of attachment may be issued and no bond or affidavit prior to the issuance thereof shall be required. In all actions in this state, the records of the commission, or the appropriate county, city or town, shall be prima facie evidence of the determination of the tax due or the amount of the delinquency. [1981 c 139 § 16.]

Severability—1981 c 139: See note following RCW 9.46.070.

9.46.900 Severability—1973 1st ex.s. c 218. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 218 § 31.]

Reviser's note: See note following RCW 9.46.010.

9.46.901 Intent—1987 c 4. The separation of definitions and authorized activities provisions of the state's gambling statutes into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the provisions involved. [1987 c 4 § 1.]

9.46.902 Construction—1987 c 4. This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections. [1987 c 4 § 48.]

Chapter 9.47 GAMBLING

Sections	
9.47.080	Bucket shop defined.
9.47.090	Maintaining bucket shop—Penalty.
9.47.100	Written statement to be furnished—Presumption.
9.47.120	Bunco steering.

*Action to recover
leased premises used for gambling: RCW 4.24.080.
money lost at gambling: RCW 4.24.070, 4.24.090.*

Allowing minor to gamble: RCW 26.28.080.

*Baseball, bribery and illegal practices: RCW 67.04.010, 67.04.020,
67.04.050.*

Gaming apparatus, search and seizure: RCW 10.79.015.

Sporting contests, fraud: RCW 67.24.010.

9.47.080 Bucket shop defined. A bucket shop is hereby defined to be a shed, tent, tenement, booth, building, float or vessel, or any part thereof, wherein may be made contracts respecting the purchase or sale upon margin or credit of any commodities, securities, or property, or option for the purchase thereof, wherein

both parties intend that such contract shall or may be terminated, closed and settled; either,

(1) Upon the basis of the market prices quoted or made on any board of trade or exchange upon which such commodities, securities, or property may be dealt in; or,

(2) When the market prices for such commodities, securities or property shall reach a certain figure in any such board of trade or exchange; or,

(3) On the basis of the difference in the market prices at which said commodities, securities or property are, or purport to be, bought and sold. [1909 c 249 § 223; RRS § 2475.]

Securities and investments: Title 21 RCW.

9.47.090 Maintaining bucket shop—Penalty. Every person, whether in his own behalf, or as agent, servant or employee of another person, within or outside of this state, who shall open, conduct or carry on any bucket shop, or make or offer to make any contract described in RCW 9.47.080, or with intent to make such a contract, or assist therein, shall receive, exhibit, or display any statement of market prices of any commodities, securities, or property, shall be punished by imprisonment in the state penitentiary for not more than five years. [1909 c 249 § 224; RRS § 2476.]

9.47.100 Written statement to be furnished—Presumption. Every person, whether in his own behalf, or as the servant, agent or employee of another person, within or outside of this state, who shall buy or sell for another, or execute any order for the purchase or sale of any commodities, securities or property, upon margin or credit, whether for immediate or future delivery, shall, upon written demand therefor, furnish such principal or customer with a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, the place where, the amount of, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within forty-eight hours after such written demand, such refusal shall be prima facie evidence as against him that such purchase or sale was made in violation of RCW 9.47.090. [1909 c 249 § 225; RRS § 2477.]

9.47.120 Bunco steering. Every person who shall entice, or induce another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice or device, is being conducted or operated; or while in such place shall entice or induce another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight of hand performance, fraud or fraudulent scheme, cards, dice, or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan any money or property, or representative of either, shall be punished by imprisonment in the state penitentiary for not more than ten years. [1909 c 249 § 227; RRS § 2479.]

Swindling: Chapter 9A.60 RCW.

Chapter 9.47A

INHALING TOXIC FUMES

(Formerly: Glue sniffing)

Sections

9.47A.010	Definition.
9.47A.020	Unlawful inhalation—Exception.
9.47A.030	Possession of certain substances prohibited, when.
9.47A.040	Sale of certain substances prohibited, when.
9.47A.050	Penalty.

9.47A.010 Definition. As used in this chapter, the phrase "substance containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any substance containing one or more of the following chemical compounds:

- (1) Acetone;
- (2) Amylacetate;
- (3) Benzol or benzene;
- (4) Butyl acetate;
- (5) Butyl alcohol;
- (6) Carbon tetrachloride;
- (7) Chloroform;
- (8) Cyclohexanone;
- (9) Ethanol or ethyl alcohol;
- (10) Ethyl acetate;
- (11) Hexane;
- (12) Isopropanol or isopropyl alcohol;
- (13) Isopropyl acetate;
- (14) Methyl "cellosolve" acetate;
- (15) Methyl ethyl ketone;
- (16) Methyl isobutyl ketone;
- (17) Toluol or toluene;
- (18) Trichloroethylene;
- (19) Tricresyl phosphate;
- (20) Xylol or xylene; or
- (21) Any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors. [1984 c 68 § 1; 1969 ex.s. c 149 § 1.]

9.47A.020 Unlawful inhalation—Exception. It is unlawful for any person to intentionally smell or inhale the fumes of any type of substance as defined in RCW 9.47A.010 or to induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes. This section does not apply to the inhalation of any anesthesia for medical or dental purposes. [1984 c 68 § 2; 1969 ex.s. c 149 § 2.]

9.47A.030 Possession of certain substances prohibited, when. No person may, for the purpose of violating RCW 9.47A.020, use, or possess for the purpose of so using, any substance containing a solvent having the

property of releasing toxic vapors or fumes. [1984 c 68 § 3; 1969 ex.s. c 149 § 3.]

9.47A.040 Sale of certain substances prohibited, when. No person may sell, offer to sell, deliver, or give to any other person any container of a substance containing a solvent having the property of releasing toxic vapors or fumes, if he has knowledge that the product sold, offered for sale, delivered, or given will be used for the purpose set forth in RCW 9.47A.020. [1984 c 68 § 4; 1969 ex.s. c 149 § 4.]

9.47A.050 Penalty. Any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or by both. [1969 ex.s. c 149 § 5.]

Chapter 9.51

JURIES, CRIMES RELATING TO

Sections

9.51.010	Misconduct of officer drawing jury.
9.51.020	Soliciting jury duty.
9.51.030	Misconduct of officer in charge of jury.
9.51.040	Grand juror acting after challenge allowed.
9.51.050	Disclosing transaction of grand jury.
9.51.060	Disclosure of deposition returned by grand jury.

Grand juries: Chapter 10.27 RCW.

Juries: Chapter 2.36 RCW.

Juror asking or receiving bribe: RCW 9A.72.100.

Trial

district courts: Chapter 12.12 RCW.

generally: Chapter 4.44 RCW.

juries in criminal cases: Chapter 10.49 RCW.

9.51.010 Misconduct of officer drawing jury. Every person charged by law with the preparation of any jury list or list of names from which any jury is to be drawn, and every person authorized by law to assist at the drawing of a grand or petit jury to attend a court or term of court or to try any cause or issue, who shall—

(1) Place in any such list any name at the request or solicitation, direct or indirect, of any person; or

(2) Designedly put upon the list of jurors, as having been drawn, any name which was not lawfully drawn for that purpose; or

(3) Designedly omit to place upon such list any name which was lawfully drawn; or

(4) Designedly sign or certify a list of such jurors as having been drawn which were not lawfully drawn; or

(5) Designedly and wrongfully withdraw from the box or other receptacle for the ballots containing the names of such jurors any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omit to place therein any name lawfully drawn or designated, or place therein a paper or ballot containing the name of a person not lawfully drawn and designated as a juror; or

(6) In drawing or impanelling such jury, do any act which is unfair, partial or improper in any respect;

Shall be guilty of a gross misdemeanor. [1909 c 249 § 75; Code 1881 § 922; 1854 p 94 § 107; RRS § 2327.]

9.51.020 Soliciting jury duty. Every person who shall, directly or indirectly, solicit or request any person charged with the duty of preparing any jury list to put his name, or the name of any other person, on any such list, shall be guilty of a gross misdemeanor. [1909 c 249 § 76; 1888 p 114 § 1; RRS § 2328.]

9.51.030 Misconduct of officer in charge of jury. Every person to whose charge a jury shall be committed by a court or magistrate, who shall knowingly, without leave of such court or magistrate, permit them or any one of them to receive any communication from any person, to make any communication to any person, to obtain or receive any book, paper or refreshment, or to leave the jury room, shall be guilty of a gross misdemeanor. [1909 c 249 § 77; RRS § 2329.]

9.51.040 Grand juror acting after challenge allowed. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, shall be present at, or take part, or attempt to take part, in the consideration of the charge against the defendant who interposed such challenge, or the deliberations of the grand jury thereon, shall be guilty of a misdemeanor. [1909 c 249 § 121; RRS § 2373.]

9.51.050 Disclosing transaction of grand jury. Every judge, grand juror, prosecuting attorney, clerk, stenographer or other officer who, except in the due discharge of his official duty, shall disclose the fact that a presentment has been made or indictment found or ordered against any person, before such person shall be in custody; and every grand juror, clerk or stenographer who, except when lawfully required by a court or officer, shall disclose any evidence adduced before the grand jury, or any proceeding, discussion or vote of the grand jury or any member thereof, shall be guilty of a misdemeanor. [1909 c 249 § 126; Code 1881 § 991; 1854 p 111 § 56; RRS § 2378.]

9.51.060 Disclosure of deposition returned by grand jury. Every clerk of any court or other officer who shall wilfully permit any deposition, or the transcript of any testimony, returned by a grand jury and filed with such clerk or officer, to be inspected by any person except the court, the deputies or assistants of such clerk, and the prosecuting attorney and his deputies, until after the arrest of the defendant, shall be guilty of a misdemeanor. [1909 c 249 § 127; RRS § 2379.]

Chapter 9.54

LARCENY

Sections

9.54.130 Restoration of stolen property—Duty of officers.

Insurance agent, appropriation of premiums: RCW 48.17.480.

Pawnbrokers and second-hand dealers: RCW 19.60.066.

Public lands, taking or destroying property is larceny: RCW 79.01.748.

Public officer misappropriating funds: RCW 42.20.070, 42.20.090.
Removing native flora from state lands or highways: RCW 47.40.080.
Retaining books, etc., from public library: RCW 27.12.340.
Search and seizures: Chapter 10.79 RCW.
Stealing, receiving railroad property: RCW 81.60.080, 81.60.090.
Stolen property, restoration, sale does not divest rights, duty of officer: RCW 10.79.050.
Sufficiency of indictment or information alleging crime of larceny: RCW 10.37.110.
Theft and robbery: Chapter 9A.56 RCW.
Theft of food fish, shellfish, or fishing gear: RCW 75.12.090.

9.54.130 Restoration of stolen property—Duty of officers. The officer arresting any person charged as principal or accessory in any robbery or larceny shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his hands, and shall annex a schedule thereof to his return of the warrant.

Whenever the prosecuting attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his demand, shall deliver it to him and take his receipt therefor, after which such prosecuting attorney shall be answerable for the same. [1909 c 249 § 357; RRS § 2609.]

Chapter 9.55

LEGISLATURE, CRIMES RELATING TO

Sections

9.55.020 Witness refusing to attend legislature or committee or to testify.

9.55.020 Witness refusing to attend legislature or committee or to testify. Every person duly summoned to attend as a witness before either house of the legislature of this state, or any committee thereof authorized to summon witnesses, who shall refuse or neglect, without lawful excuse, to attend pursuant to such summons, or who shall wilfully refuse to be sworn or to affirm or to answer any material or proper question or to produce, upon reasonable notice, any material or proper books, papers or documents in his possession or under his control, shall be guilty of a gross misdemeanor. [1909 c 249 § 86; RRS § 2338.]

Legislative inquiry: Chapter 44.16 RCW.

Chapter 9.58

LIBEL AND SLANDER

Sections

9.58.010 Libel, what constitutes.
 9.58.020 How justified or excused—Malice, when presumed.
 9.58.030 Publication defined.
 9.58.040 Liability of editors and others.
 9.58.050 Report of proceedings privileged.
 9.58.060 Venue punishment restricted.
 9.58.070 Privileged communications.
 9.58.080 Furnishing libelous information.
 9.58.090 Threatening to publish libel.
 9.58.110 Slander of woman.
 9.58.120 Testimony necessary to convict.

Blacklisting: RCW 49.44.010.

Judge or justice using unfit language: RCW 42.20.110.

Sufficiency of indictment or information for libel: RCW 10.37.120.

9.58.010 Libel, what constitutes. Every malicious publication by writing, printing, picture, effigy, sign[,] radio broadcasting or which shall in any other manner transmit the human voice or reproduce the same from records or other appliances or means, which shall tend:—

(1) To expose any living person to hatred, contempt, ridicule or obloquy, or to deprive him of the benefit of public confidence or social intercourse; or

(2) To expose the memory of one deceased to hatred, contempt, ridicule or obloquy; or

(3) To injure any person, corporation or association of persons in his or their business or occupation, shall be libel. Every person who publishes a libel shall be guilty of a gross misdemeanor. [1935 c 117 § 1; 1909 c 249 § 172; 1891 c 69 § 3; Code 1881 §§ 1230, 1231; 1879 p 144 § 1; 1869 p 383 §§ 1, 2; RRS § 2424.]

9.58.020 How justified or excused—Malice, when presumed. Every publication having the tendency or effect mentioned in RCW 9.58.010 shall be deemed malicious unless justified or excused. Such publication is justified whenever the matter charged as libelous charges the commission of a crime, is a true and fair statement, and was published with good motives and for justifiable ends. It is excused when honestly made in belief of its truth and fairness and upon reasonable grounds for such belief, and consists of fair comments upon the conduct of any person in respect of public affairs, made after a fair and impartial investigation. [1909 c 249 § 173; Code 1881 § 1233; 1879 p 144 § 4; 1869 p 384 § 3; RRS § 2425.]

9.58.030 Publication defined. Any method by which matter charged as libelous may be communicated to another shall be deemed a publication thereof. [1909 c 249 § 174; Code 1881 § 1234; 1869 p 384 § 5; RRS § 2426.]

9.58.040 Liability of editors and others. Every editor or proprietor of a book, newspaper or serial, and every manager of a copartnership or corporation by which any book, newspaper or serial is issued, is chargeable with the publication of any matter contained in any such book, newspaper or serial, and every owner, operator, proprietor or person exercising control over any broadcasting station or reproducing [reproducing] record of human voice or who broadcasts over the radio or reproduces the human voice or aids or abets either directly or indirectly in such broadcast or reproduction shall be chargeable with the publication of any matter so disseminated: *Provided*, That in any prosecution or action for libel it shall be an absolute defense if the defendant shows that the matter complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make such publication and was promptly retracted by the defendant with an equal degree of publicity upon written request of the complainant. [1935 c 117 § 2; 1909 c 249 § 175;

Code 1881 §§ 1230, 1231; 1879 p 144 § 1; 1869 p 383 §§ 1, 2; RRS § 2427.]

Radio and television broadcasting: Chapter 19.64 RCW.

9.58.050 Report of proceedings privileged. No prosecution for libel shall be maintained against a reporter, editor, proprietor, or publisher of a newspaper for the publication therein of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report. The editor or proprietor of a book, newspaper or serial shall be proceeded against in the county where such book, newspaper or serial is published. [1909 c 249 § 176; RRS § 2428.]

9.58.060 Venue punishment restricted. Every other person publishing a libel in this state may be proceeded against in any county where such libelous matter was published or circulated, but a person shall not be proceeded against for the publication of the same libel against the same person in more than one county. [1909 c 249 § 177; RRS § 2429.]

9.58.070 Privileged communications. Every communication made to a person entitled to or concerned in such communication, by one also concerned in or entitled to make it, or who stood in such relation to the former as to offer a reasonable ground for supposing his motive to be innocent, shall be presumed not to be malicious, and shall be termed a privileged communication. [1909 c 249 § 178; RRS § 2430.]

9.58.080 Furnishing libelous information. Every person who shall wilfully state, deliver or transmit by any means whatever, to any manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation, which, if published therein, would be a libel, shall be guilty of a misdemeanor. [1909 c 249 § 179; RRS § 2431.]

9.58.090 Threatening to publish libel. Every person who shall threaten another with the publication of a libel concerning the latter, or his spouse, parent, child, or other member of his family, and every person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort money or other valuable consideration from any person, shall be guilty of a gross misdemeanor. [1909 c 249 § 180; RRS § 2432.]

Extortion, blackmail, and coercion: Chapter 9A.56 RCW.

9.58.110 Slander of woman. Every person who, in the presence or hearing of any person other than the female slandered, whether she be present or not, shall maliciously speak of or concerning any female of the age of twelve years or upwards, not a common prostitute, any false or defamatory words or language which shall injure or impair the reputation of any such female for virtue or

chastity or which shall expose her to hatred, contempt or ridicule, shall be guilty of a misdemeanor. Every slander herein mentioned shall be deemed to be malicious unless justified, and shall be justified when the language charged as slanderous, false or defamatory is true and fair, and was spoken with good motives and for justifiable ends. [1909 c 249 § 181; RRS § 2433.]

9.58.120 Testimony necessary to convict. No conviction shall be had under RCW 9.58.110, upon the testimony of the woman slandered as to the speaking of the slander, unsupported by other evidence. [1927 c 90 § 1; 1909 c 249 § 182; RRS § 2434.]

Chapter 9.61

MALICIOUS MISCHIEF—INJURY TO PROPERTY

Sections	
9.61.140	Endangering life and property by explosives—Penalty.
9.61.150	Damaging building, etc., by explosion—Penalty.
9.61.160	Threats to bomb or injure property.
9.61.170	Threats to bomb or injure property—Hoax no defense.
9.61.180	Threats to bomb or injure property—Penalty.
9.61.190	Carrier or racing pigeons—Injury to.
9.61.200	Carrier or racing pigeons—Removal or alteration of identification.
9.61.210	Carrier or racing pigeons—Penalty.
9.61.230	Telephone calls to harass, intimidate, torment, or embarrass.
9.61.240	Telephone calls to harass, intimidate, torment, or embarrass—Permitting telephone to be used.
9.61.250	Telephone calls to harass, intimidate, torment, or embarrass—Offense, where deemed committed.

Endangering life by breach of labor contract: RCW 49.44.080.

Insured property, injury or destruction: RCW 9.91.090, 48.30.220.

Malicious mischief: RCW 9A.48.070 through 9A.48.100.

Mutilation or destruction of property by school official: RCW 28A.87.130.

Nuisance: Chapter 9.66 RCW.

Ownership of property—Proof of: RCW 10.58.060.

Public library property, intentional injury: RCW 27.12.330.

9.61.140 Endangering life and property by explosives—Penalty. See RCW 70.74.270.

9.61.150 Damaging building, etc., by explosion—Penalty. See RCW 70.74.280.

Gas bombs, stink bombs, etc.: RCW 70.74.310.

9.61.160 Threats to bomb or injure property. It shall be unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any governmental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated. [1977 ex.s. c 231 § 1; 1959 c 141 § 1.]

9.61.170 Threats to bomb or injure property—Hoax no defense. It shall not be a defense to any prosecution under RCW 9.61.160 through 9.61.180 that the threatened bombing or injury was a hoax. [1959 c 141 § 2.]

9.61.180 Threats to bomb or injure property—Penalty. Any violation of RCW 9.61.160 through 9.61.180 shall be a felony. [1977 ex.s. c 231 § 2; 1959 c 141 § 3.]

9.61.190 Carrier or racing pigeons—Injury to. (Effective until January 1, 1989.) It shall be unlawful for any person, other than the owner thereof or his authorized agent, to knowingly shoot, kill, maim, injure, molest, entrap, or detain any Antwerp Messenger or Racing Pigeon, commonly called "carrier or racing pigeons", having the name of its owner stamped upon its wing or tail or bearing upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon. [1963 c 69 § 1.]

9.61.190 Carrier or racing pigeons—Injury to. (Effective January 1, 1989.) It is a class 1 civil infraction for any person, other than the owner thereof or his authorized agent, to knowingly shoot, kill, maim, injure, molest, entrap, or detain any Antwerp Messenger or Racing Pigeon, commonly called "carrier or racing pigeons", having the name of its owner stamped upon its wing or tail or bearing upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon. [1987 c 456 § 25; 1963 c 69 § 1.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Effective date—1987 c 456 §§ 9–31: See RCW 7.80.901.

9.61.200 Carrier or racing pigeons—Removal or alteration of identification. (Effective until January 1, 1989.) It shall be unlawful for any person other than the owner thereof or his authorized agent to remove or alter any stamp, leg band, ring, or other mark of identification attached to any Antwerp Messenger or Racing Pigeon. [1963 c 69 § 2.]

9.61.200 Carrier or racing pigeons—Removal or alteration of identification. (Effective January 1, 1989.) It is a class 2 civil infraction for any person other than the owner thereof or his authorized agent to remove or alter any stamp, leg band, ring, or other mark of identification attached to any Antwerp Messenger or Racing Pigeon. [1987 c 456 § 26; 1963 c 69 § 2.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Effective date—1987 c 456 §§ 9–31: See RCW 7.80.901.

9.61.210 Carrier or racing pigeons—Penalty. (Effective until January 1, 1989.) Any person who shall violate any of the provisions of RCW 9.61.190 or 9.61.200 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed twenty-five dollars for every such offense. [1963 c 69 § 3.]

9.61.230 Telephone calls to harass, intimidate, torment, or embarrass. Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(1) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(2) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(3) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household;

shall be guilty of a gross misdemeanor, unless that person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW. [1985 c 288 § 11; 1967 c 16 § 1.]

Effective date—Severability—1985 c 288: See RCW 9A.46.905 and 9A.46.910.

Severability—1967 c 16: "If any portion of this act is held to be unconstitutional or void, such decision shall not affect the validity of the remaining parts of this act." [1967 c 16 § 4.]

Communicating with child for immoral purposes: RCW 9.68A.090.

Interference with telephone message: RCW 9A.48.070, 9A.48.080.

9.61.240 Telephone calls to harass, intimidate, torment, or embarrass—Permitting telephone to be used. Any person who knowingly permits any telephone under his control to be used for any purpose prohibited by RCW 9.61.230 shall be guilty of a misdemeanor. [1967 c 16 § 2.]

9.61.250 Telephone calls to harass, intimidate, torment, or embarrass—Offense, where deemed committed. Any offense committed by use of a telephone as set forth in RCW 9.61.230 may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received. [1967 c 16 § 3.]

Chapter 9.62

MALICIOUS PROSECUTION—ABUSE OF PROCESS

Sections

9.62.010 Malicious prosecution.

9.62.020 Instituting suit in name of another.

9.62.010 Malicious prosecution. Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he is innocent—

(1) If such crime be a felony, shall be punished by imprisonment in the state penitentiary for not more than five years; and,

(2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor. [1909 c 249 § 117; Code 1881 § 899; 1873 p 203 § 98; 1854 p 92 § 89; RRS § 2369.]

9.62.020 Instituting suit in name of another. Every person who shall institute or prosecute any action or other proceeding in the name of another, without his consent and contrary to law, shall be guilty of a gross misdemeanor. [1909 c 249 § 124; RRS § 2376.]

Chapter 9.66 NUISANCE

Sections

9.66.010	Public nuisance.
9.66.020	Unequal damage.
9.66.030	Maintaining or permitting nuisance.
9.66.040	Abatement of nuisance.
9.66.050	Deposit of unwholesome substance.

Cemeteries established illegally: RCW 68.56.040.

Furnishing impure water: RCW 70.54.020.

Malicious mischief—Injury to property: Chapters 9.61, 9A.48 RCW.

Mausoleums and columbariums constructed illegally: RCW 68.28.060.

Nuisances: Chapter 7.48 RCW.

Poisoning food or water: RCW 69.40.030.

Venereal disease control, penalty: RCW 70.24.080.

9.66.010 Public nuisance. A public nuisance is a crime against the order and economy of the state. Every place

(1) Wherein any fighting between men or animals or birds shall be conducted; or,

(2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

(3) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

(1) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

(2) Shall offend public decency; or,

(3) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley or highway; or,

(4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance. [1971 ex.s. c 280 § 22; 1909 c 249 § 248; 1895 c 14 § 1; Code 1881 § 1246; RRS § 2500.]

Severability—Construction—1971 ex.s. c 280: "If any provision of this 1971 amendatory 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: *Provided*, That should provisions of this 1971 amendatory act pertaining to the playing of bingo, or holding raffles, permitting the operation of amusement games be held invalid or unconstitutional by the supreme court of the state of Washington as being violative of Article II, section 24, of the Constitution of the state of Washington, then the provisions hereof relating to each such item as aforesaid specifically

declared invalid or unconstitutional by such court shall remain inoperative unless and until the qualified electors of this state shall approve an amendment to Article II, section 24, of the Constitution which may remove any constitutional restrictions against the legislature enacting such laws." [1971 ex.s. c 280 § 21.]

Boxing and wrestling regulated: Chapter 67.08 RCW.

Devices simulating traffic control signs declared public nuisance: RCW 47.36.180.

Highway obstructions: Chapter 47.32 RCW.

Navigation, obstructing: Chapter 88.28 RCW.

Parimutuel betting on horse races permitted: RCW 67.16.060.

9.66.020 Unequal damage. An act which affects a considerable number of persons in any of the ways specified in RCW 9.66.010 is not less a public nuisance because the extent of the damage is unequal. [1909 c 249 § 249; Code 1881 § 1236; 1875 p 79 § 2; RRS § 2501.]

9.66.030 Maintaining or permitting nuisance. Every person who shall commit or maintain a public nuisance, for which no special punishment is prescribed; or who shall wilfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and every person who shall let, or permit to be used, any building or boat, or portion thereof, knowing that it is intended to be, or is being used, for committing or maintaining any such nuisance, shall be guilty of a misdemeanor. [1909 c 249 § 250; Code 1881 § 1248; 1875 p 81 § 14; RRS § 2502.]

9.66.040 Abatement of nuisance. Any court or magistrate before whom there may be pending any proceeding for a violation of RCW 9.66.030, shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant. *Provided*, That if the conviction was had in a district court, the district judge shall not issue the order and warrant of abatement, but on application therefor, shall transfer the cause to the superior court which shall proceed to try the issue of abatement in the same manner as if the action had been originally commenced therein. [1987 c 202 § 140; 1957 c 45 § 4; 1909 c 249 § 251; Code 1881 §§ 1244, 1245; 1875 p 80 §§ 10, 11; RRS § 2503.]

Intent—1987 c 202: See note following RCW 2.04.190.

Jurisdiction to abate a nuisance: State Constitution Art. 4 § 6 (Amendment 28).

9.66.050 Deposit of unwholesome substance. Every person who shall deposit, leave or keep, on or near a highway or route of public travel, on land or water, any unwholesome substance; or who shall establish, maintain or carry on, upon or near a highway or route of public travel, on land or water, any business, trade or manufacture which is noisome or detrimental to the public health; or who shall deposit or cast into any lake, creek or river, wholly or partly in this state, the offal from or the dead body of any animal, shall be guilty of a gross misdemeanor. [1909 c 249 § 285; RRS § 2537.]

Discharging ballast: RCW 88.28.060.

Disposal of dead animals: Chapter 16.68 RCW.

Water pollution: Chapter 35.88 RCW, RCW 70.54.010 through 70.54.030, chapter 90.48 RCW.

Chapter 9.68

OBSCENITY AND PORNOGRAPHY

Sections

9.68.015	Obscene literature, shows, etc.—Exemptions.
9.68.030	Indecent articles, etc.
9.68.050	"Erotic material"—Definitions.
9.68.060	"Erotic material"—Determination by court—Labeling—Penalties.
9.68.070	Prosecution for violation of RCW 9.68.060—Defense.
9.68.080	Unlawful acts.
9.68.090	Civil liability of wholesaler or wholesaler--distributor.
9.68.100	Exceptions to RCW 9.68.050 through 9.68.120.
9.68.110	Motion picture operator or projectionist exempt, when.
9.68.120	Provisions of RCW 9.68.050 through 9.68.120 exclusive.
9.68.130	"Sexually explicit material"—Defined—Unlawful display.
9.68.140	Promoting pornography—Class C felony—Penalties.

Injunctions, obscene materials: Chapter 7.42 RCW.

Public indecency: Chapter 9A.88 RCW.

Sufficiency of indictment or information, obscene literature: RCW 10.37.130.

Telephone calls using obscene language: RCW 9.61.230 through 9.61.250.

9.68.015 Obscene literature, shows, etc.—Exemptions. Nothing in *this act shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1959 c 260 § 2.]

*Reviser's note: "this act" [1959 c 260] consists of RCW 9.68.015 and the amendments to RCW 9.68.010; that section was later repealed by 1982 c 184 § 11.

9.68.030 Indecent articles, etc. Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for causing unlawful abortion; or shall write, print, distribute or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. [1971 ex.s. c 185 § 2; 1909 c 249 § 208; RRS § 2460.]

Manufacture or sale of means of abortion: RCW 9.02.030.

9.68.050 "Erotic material"—Definitions. For the purposes of RCW 9.68.050 through 9.68.120:

(1) "Minor" means any person under the age of eighteen years;

(2) "Erotic material" means printed material, photographs, pictures, motion pictures, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of

sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;

(3) "Person" means any individual, corporation, or other organization;

(4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, or motion pictures. [1969 ex.s. c 256 § 13.]

Severability—1969 ex.s. c 256: "If any provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances, is not affected." [1969 ex.s. c 256 § 21.]

9.68.060 "Erotic material"—Determination by court—Labeling—Penalties. (1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, the court shall issue an order requiring that an "adults only" label be placed on the publication, if such publication is going to continue to be distributed. Whenever the superior court orders a publication to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication. All dealers and distributors are hereby prohibited from displaying erotic publications in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make them readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of said motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(c) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(d) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW

9.68.050 through 9.68.120, such violation to carry the following penalties:

(i) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(ii) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned not more than one year;

(iii) For all subsequent offenses a felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year. [1969 ex.s. c 256 § 14.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.070 Prosecution for violation of RCW 9.68-.060—Defense. In any prosecution for violation of RCW 9.68.060, it shall be a defense that:

(1) If the violation pertains to a motion picture, the minor was accompanied by a parent, parent's spouse, or guardian; or

(2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or

(3) Such minor was accompanied by a person who represented himself to be a parent, or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation. [1969 ex.s. c 256 § 15.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.080 Unlawful acts. (1) It shall be unlawful for any minor to misrepresent his true age or his true status as the child, stepchild or ward of a person accompanying him, for the purpose of purchasing or obtaining access to any material described in RCW 9.68.050.

(2) It shall be unlawful for any person accompanying such minor to misrepresent his true status as parent, spouse of a parent or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in RCW 9.68.050. [1969 ex.s. c 256 § 16.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.090 Civil liability of wholesaler or wholesaler-distributor. No retailer, wholesaler, or exhibitor is to be deprived of service from a wholesaler or wholesaler-distributor of books, magazines, motion pictures or other materials or subjected to loss of his franchise or right to deal or exhibit as a result of his attempts to comply with this statute. Any publisher, distributor, or other person, or combination of such persons, which withdraws or attempts to withdraw a franchise or other right to sell at retail, wholesale or exhibit materials on account of the retailer's, wholesaler's or exhibitor's attempts to comply with RCW 9.68.050 through 9.68.120 shall incur civil liability to such retailer, wholesaler or exhibitor for

threefold the actual damages resulting from such withdrawal or attempted withdrawal. [1969 ex.s. c 256 § 17.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.100 Exceptions to RCW 9.68.050 through 9.68-.120. Nothing in RCW 9.68.050 through 9.68.120 shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision. [1969 ex.s. c 256 § 18.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.110 Motion picture operator or projectionist exempt, when. The provisions of RCW 9.68.050 through 9.68.120 shall not apply to acts done in the scope of his employment by a motion picture operator or projectionist employed by the owner or manager of a theatre or other place for the showing of motion pictures, unless the motion picture operator or projectionist has a financial interest in such theatre or place wherein he is so employed or unless he caused to be performed or exhibited such performance or motion picture without the knowledge and consent of the manager or owner of the theatre or other place of showing. [1969 ex.s. c 256 § 19.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.120 Provisions of RCW 9.68.050 through 9.68-.120 exclusive. The provisions of RCW 9.68.050 through 9.68.120 shall be exclusive. [1969 ex.s. c 256 § 20.]

Severability—1969 ex.s. c 256: See note following RCW 9.68.050.

9.68.130 "Sexually explicit material"—Defined—Unlawful display. (1) A person is guilty of unlawful display of sexually explicit material if he knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.

(2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: *Provided however*, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

(3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor. [1975 1st ex.s. c 156 § 1.]

9.68.140 Promoting pornography—Class C felony—Penalties. A person who, for profit-making purposes and with knowledge, sells, exhibits, displays, or produces any lewd matter as defined in RCW 7.48A.010

is guilty of promoting pornography. Promoting pornography is a class C felony and shall bear the punishment and fines prescribed for that class of felony. In imposing the criminal penalty, the court shall consider the wilfulness of the defendant's conduct and the profits made by the defendant attributable to the felony. All fines assessed under this chapter shall be paid into the general treasury of the state. [1985 c 235 § 3; 1982 c 184 § 8.]

Severability—1985 c 235: See note following RCW 7.48A.040.

Severability—1982 c 184: See RCW 7.48A.900.

Class C felony—Authorized sentence: RCW 9A.20.020.

Chapter 9.68A

SEXUAL EXPLOITATION OF CHILDREN

(Formerly: Child pornography)

Sections

9.68A.001	Legislative finding.
9.68A.011	Definitions.
9.68A.040	Sexual exploitation of a minor—Elements of crime—Penalties.
9.68A.050	Dealing in depictions of minor engaged in sexually explicit conduct.
9.68A.060	Sending, bringing into state depictions of minor engaged in sexually explicit conduct.
9.68A.070	Possession of depictions of minor engaged in sexually explicit conduct.
9.68A.080	Processors of depictions of minor engaged in sexually explicit conduct—Report required.
9.68A.090	Communication with minor for immoral purposes.
9.68A.100	Patronizing juvenile prostitute.
9.68A.110	Certain defenses barred, permitted.
9.68A.120	Seizure and forfeiture of property.
9.68A.130	Recovery of costs of suit by minor.
9.68A.140	Definitions.
9.68A.150	Allowing minor on premises of live erotic performance.
9.68A.160	Penalty.
9.68A.910	Severability—1984 c 262.

9.68A.001 Legislative finding. The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities. [1984 c 262 § 1.]

9.68A.011 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout the [this] chapter.

(1) To "photograph" means to make a print, negative, slide, motion picture, or videotape. A "photograph" means any tangible item produced by photographing.

(2) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(3) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital–genital, oral–genital, anal–genital, or oral–anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation, for the purpose of sexual stimulation of the viewer;

(d) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer;

(e) Exhibition of the genitals or unclothed pubic or rectal areas of any minor for the purpose of sexual stimulation of the viewer;

(f) Defecation or urination for the purpose of sexual stimulation of the viewer; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer. [1984 c 262 § 2.]

9.68A.040 Sexual exploitation of a minor—Elements of crime—Penalties. (1) A person is guilty of sexual exploitation of a minor if the person:

(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;

(b) Aids or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is:

(a) A class B felony punishable under chapter 9A.20 RCW if the minor exploited is less than sixteen years old at the time of the offense; and

(b) A class C felony punishable under chapter 9A.20 RCW if the minor exploited is at least sixteen years old but less than eighteen years old at the time of the offense. [1984 c 262 § 3.]

9.68A.050 Dealing in depictions of minor engaged in sexually explicit conduct. A person who:

(1) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or

(2) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct

is guilty of a class C felony punishable under chapter 9A.20 RCW.

(3) As used in this section, "minor" means a person under sixteen years of age. [1984 c 262 § 4.]

9.68A.060 Sending, bringing into state depictions of minor engaged in sexually explicit conduct. (1) A person who knowingly sends or causes to be sent, or brings or

causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) As used in this section, "minor" means a person under sixteen years of age. [1984 c 262 § 5.]

9.68A.070 Possession of depictions of minor engaged in sexually explicit conduct. (1) A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a gross misdemeanor.

(2) As used in this section, "minor" means a person under sixteen years of age. [1984 c 262 § 6.]

9.68A.080 Processors of depictions of minor engaged in sexually explicit conduct—Report required. (1) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

(2) As used in this section, "minor" means a person under sixteen years of age. [1984 c 262 § 7.]

9.68A.090 Communication with minor for immoral purposes. (1) A person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor, unless that person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) As used in this section, "minor" means a person under eighteen years of age. [1986 c 319 § 2; 1984 c 262 § 8.]

9.68A.100 Patronizing juvenile prostitute. (1) A person is guilty of patronizing a juvenile prostitute if that person engages or agrees or offers to engage in sexual conduct with a minor in return for a fee, and is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) As used in this section, "minor" means a person under eighteen years of age. [1984 c 262 § 9.]

9.68A.110 Certain defenses barred, permitted. (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. This chapter does not apply to individual case treatment in a recognized medical facility or individual case treatment by a psychiatrist or psychologist licensed under Title 18 RCW, or to lawful conduct between spouses.

(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: *Provided*, That 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, or 9.68A.100, it is not a defense that the defendant did not know the alleged victim's age: *Provided*, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least eighteen years of age based on declarations by the alleged victim.

(4) In a prosecution under RCW 9.68A.050 or 9.68A.060, it is not a defense that the defendant did not know the alleged victim's age: *Provided*, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least sixteen years of age based on declarations by the alleged victim.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, or 9.68A.070, the state is not required to establish the identity of the alleged victim. [1986 c 319 § 3; 1984 c 262 § 10.]

9.68A.120 Seizure and forfeiture of property. The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to

possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the criminal justice training account established under *RCW 43.101.210 which shall be appropriated by law to the Washington state criminal justice training commission and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law. [1984 c 262 § 11.]

*Reviser's note: RCW 43.101.210 was repealed by 1984 c 258 § 339, effective July 1, 1985.

9.68A.130 Recovery of costs of suit by minor. A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees. [1984 c 262 § 12.]

9.68A.140 Definitions. For the purposes of RCW 9.68A.140 through 9.68A.160:

(1) "Minor" means any person under the age of eighteen years.

(2) "Erotic materials" means live performance:

(a) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest of minors; and

(b) Which explicitly depicts or describes patently offensive representations or descriptions of sexually explicit conduct as defined in RCW 9.68A.011; and

(c) Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value for minors.

(3) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to, or before an audience of one or more, with or without consideration.

(4) "Person" means any individual, partnership, firm, association, corporation, or other legal entity. [1987 c 396 § 1.]

Severability—1987 c 396: "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." [1987 c 396 § 4.]

9.68A.150 Allowing minor on premises of live erotic performance. No person may knowingly allow a minor to be on the premises of a commercial establishment open to the public if there is a live performance containing matter which is erotic material. [1987 c 396 § 2.]

Severability—1987 c 396: See note following RCW 9.68A.140.

9.68A.160 Penalty. Any person who is convicted of violating any provision of RCW 9.68A.150 is guilty of a gross misdemeanor. [1987 c 396 § 3.]

Severability—1987 c 396: See note following RCW 9.68A.140.

9.68A.910 Severability—1984 c 262. 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. [1984 c 262 § 15.]

Chapter 9.69

OBSTRUCTING JUSTICE

Sections

9.69.100 Duty of witness of offense against child or any violent offense—Penalty.

Labor and industries officer, disobeying subpoena to appear before: RCW 43.22.300.

Legislative hearings, failure to obey subpoena or testify: RCW 44.16.120 through 44.16.150.

Obstructing governmental operation: Chapter 9A.76 RCW.

Wills, fraudulently failing to deliver: RCW 11.20.010.

9.69.100 Duty of witness of offense against child or any violent offense—Penalty. (1) A person who witnesses the actual commission of:

(a) A violent offense as defined in RCW 9.94A.030 or preparations for the commission of such an offense;

(b) A sexual offense against a child or an attempt to commit such a sexual offense; or

(c) An assault of a child that appears reasonably likely to cause substantial bodily harm to the child, shall as soon as reasonably possible notify the prosecuting attorney, law enforcement, medical assistance, or other public officials.

(2) This section shall not be construed to affect privileged relationships as provided by law.

(3) The duty to notify a person or agency under this section is met if a person notifies or attempts to provide

such notice by telephone or any other means as soon as reasonably possible.

(4) Failure to report as required by subsection (1) of this section is a gross misdemeanor. However, a person is not required to report under this section where that person has a reasonable belief that making such a report would place that person or another family or household member in danger of immediate physical harm. [1987 c 503 § 18; 1985 c 443 § 21; 1970 ex.s. c 49 § 8.]

Severability—Effective date—1987 c 503: See RCW 74.14B.901 and 74.14B.902.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Severability—1970 ex.s. c 49: "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." [1970 ex.s. c 49 § 9.]

Chapter 9.72

PERJURY

Sections

9.72.090 Committal of witness—Detention of documents.

Agricultural co-ops, false statements: RCW 24.32.330.

Banks and trust companies

false swearing in bank or trust company examinations: RCW 30.04.060.

knowingly subscribing to false statement: RCW 30.12.090.

Elections

absentee voting, falsification of qualifications: RCW 29.36.160.

falsification by voter: Chapter 29.85 RCW.

initiative and referendum petition signer, false statement: RCW 29.79.440.

recall petition signer, false statement: RCW 29.82.170.

Land registration falsification: RCW 65.12.740.

Marriage affidavit falsification: RCW 26.04.210.

Perjury and interference with official proceedings: Chapter 9A.72 RCW.

Public assistance, falsification of application: RCW 74.08.055.

Sufficiency of indictment or information charging perjury: RCW 10.37.140.

Taxation, false property listing: RCW 84.40.120.

9.72.090 Committal of witness—Detention of documents. Whenever it shall appear probable to a judge, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before such judge, magistrate, or officer has committed perjury in any testimony so given, or offered any false evidence, he or she may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for such person's appearance to answer such charge. In such case such judge, magistrate, or officer may detain any book, paper, document, record or other instrument produced before him or her or direct it to be delivered to the prosecuting attorney. [1987 c 202 § 141; 1909 c 249 § 107; RRS § 2359.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 9.73

PRIVACY, VIOLATING RIGHT OF

Sections	
9.73.010	Divulging telegram.
9.73.020	Opening sealed letter.
9.73.030	Intercepting, recording or divulging private communication—Consent required—Exceptions.
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9.73.050	Admissibility of intercepted communication in evidence.
9.73.060	Violating right of privacy—Civil action for—Liability for damages.
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9.73.080	Intercepting, recording, or divulging private communication—Penalty.
9.73.090	Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility.
9.73.100	Recordings available to defense counsel.
9.73.110	Intercepting, recording, or disclosing private communications—Not unlawful for building owner—Conditions.
9.73.120	Reports—Required, when, contents.
9.73.130	Recording private communications—Authorization—Application for, contents.
9.73.140	Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders.

9.73.010 Divulging telegram. Every person who shall wrongfully obtain or attempt to obtain, any knowledge of a telegraphic message, by connivance with the clerk, operator, messenger or other employee of a telegraph company, and every clerk, operator, messenger or other employee of such company who shall wilfully divulge to any but the person for whom it was intended, any telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature or contents thereof, or shall wilfully refuse, neglect or delay duly to transmit or deliver the same, shall be guilty of a misdemeanor. [1909 c 249 § 410; Code 1881 § 2342; RRS § 2662.]

Intercepting, delaying telegram: RCW 9A.48.070, 9A.48.080.

9.73.020 Opening sealed letter. Every person who shall wilfully open or read, or cause to be opened or read, any sealed message, letter or telegram intended for another person, or publish the whole or any portion of such a message, letter or telegram, knowing it to have been opened or read without authority, shall be guilty of a misdemeanor. [1909 c 249 § 411; RRS § 2663.]

9.73.030 Intercepting, recording or divulging private communication—Consent required—Exceptions. (1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:

(a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how

such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(2) Notwithstanding subsection (1) of this section, wire communications or conversations (a) of an emergency nature, such as the reporting of a fire, medical emergency, crime, or disaster, or (b) which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands, or (c) which occur anonymously or repeatedly or at an extremely inconvenient hour, or (d) which relate to communications by a hostage holder or barricaded person as defined in RCW 70.85.100, whether or not conversation ensues, may be recorded with the consent of one party to the conversation.

(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: *Provided*, That if the conversation is to be recorded that said announcement shall also be recorded.

(4) An employee of any regularly published newspaper, magazine, wire service, radio station, or television station acting in the course of bona fide news gathering duties on a full time or contractual or part time basis, shall be deemed to have consent to record and divulge communications or conversations otherwise prohibited by this chapter if the consent is expressly given or if the recording or transmitting device is readily apparent or obvious to the speakers. Withdrawal of the consent after the communication has been made shall not prohibit any such employee of a newspaper, magazine, wire service, or radio or television station from divulging the communication or conversation. [1986 c 38 § 1; 1985 c 260 § 2; 1977 ex.s. c 363 § 1; 1967 ex.s. c 93 § 1.]

Reviser's note: This section was amended by 1985 c 260 § 2 and by 1986 c 38 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1967 ex.s. c 93: "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." [1967 ex.s. c 93 § 7.]

9.73.040 Intercepting private communication—Court order permitting interception—Grounds for issuance—Duration—Renewal. (1) An ex parte order for the interception of any communication or conversation listed in RCW 9.73.030 may be issued by any superior court judge in the state upon verified application of either the state attorney general or any county prosecuting attorney setting forth fully facts and circumstances upon which the application is based and stating that:

(a) There are reasonable grounds to believe that national security is endangered, that a human life is in

danger, that arson is about to be committed, or that a riot is about to be committed, and

(b) There are reasonable grounds to believe that evidence will be obtained essential to the protection of national security, the preservation of human life, or the prevention of arson or a riot, and

(c) There are no other means readily available for obtaining such information.

(2) Where statements are solely upon the information and belief of the applicant, the grounds for the belief must be given.

(3) The applicant must state whether any prior application has been made to obtain such communications on the same instrument or for the same person and if such prior application exists the applicant shall disclose the current status thereof.

(4) The application and any order issued under RCW 9.73.030 through 9.73.080 shall identify as fully as possible the particular equipment, lines or location from which the information is to be obtained and the purpose thereof.

(5) The court may examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(6) Orders issued under this section shall be effective for fifteen days, after which period the court which issued the order may upon application of the officer who secured the original order renew or continue the order for an additional period not to exceed fifteen days.

(7) No order issued under this section shall authorize or purport to authorize any activity which would violate any laws of the United States. [1967 ex.s. c 93 § 2.]

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.050 Admissibility of intercepted communication in evidence. Any information obtained in violation of RCW 9.73.030 or pursuant to any order issued under the provisions of RCW 9.73.040 shall be inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except with the permission of the person whose rights have been violated in an action brought for damages under the provisions of RCW 9.73.030 through 9.73.080, or in a criminal action in which the defendant is charged with a crime, the commission of which would jeopardize national security. [1967 ex.s. c 93 § 3.]

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.060 Violating right of privacy—Civil action for—Liability for damages. Any person who, directly or by means of a detective agency or any other agent, violates the provisions of this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his business, his person, or his reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by him on account of violation of the provisions of this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed one thousand

dollars, and a reasonable attorney's fee and other costs of litigation. [1977 ex.s. c 363 § 2; 1967 ex.s. c 93 § 4.]

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.070 Persons and activities excepted from chapter. The provisions of this chapter shall not apply to any activity in connection with services provided by a common carrier pursuant to its tariffs on file with the Washington utilities and transportation commission or the Federal Communication Commission and any activity of any officer, agent or employee of a common carrier who performs any act otherwise prohibited by this law in the construction, maintenance, repair and operations of the common carrier's communications services, facilities, or equipment or incident to the use of such services, facilities or equipment. Common carrier as used in this section means any person engaged as a common carrier or public service company for hire in intrastate, interstate or foreign communication by wire or radio or in intrastate, interstate or foreign radio transmission of energy. [1967 ex.s. c 93 § 5.]

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.080 Intercepting, recording, or divulging private communication—Penalty. Any person who shall violate RCW 9.73.030 shall be guilty of a gross misdemeanor. [1967 ex.s. c 93 § 6.]

Severability—1967 ex.s. c 93: See note following RCW 9.73.030.

9.73.090 Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility. (1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:

(a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his constitutional rights, and such statements informing him shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official

duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: *Provided*, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: *Provided however*, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under this section shall be effective for not more than seven days, after which period the issuing authority may upon application of the officer who secured the original authorization renew or continue the authorization for an additional period not to exceed seven days. [1986 c 38 § 2; 1977 ex.s. c 363 § 3; 1970 ex.s. c 48 § 1.]

Severability—1970 ex.s. c 48: "If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional." [1970 ex.s. c 48 § 3.]

9.73.100 Recordings available to defense counsel. Video and/or sound recordings obtained by police personnel under the authority of RCW 9.73.090 and 9.73.100 shall be made available for hearing and/or viewing by defense counsel at the request of defense counsel whenever a criminal charge has been filed against the subject of the video and/or sound recordings. [1970 ex.s. c 48 § 2.]

Severability—1970 ex.s. c 48: See note following RCW 9.73.090.

9.73.110 Intercepting, recording, or disclosing private communications—Not unlawful for building owner—Conditions. It shall not be unlawful for the owner or person entitled to use and possession of a building, as defined in RCW 9A.04.110(5), or the agent

of such person, to intercept, record, or disclose communications or conversations which occur within such building if the persons engaged in such communication or conversation are engaged in a criminal act at the time of such communication or conversation by virtue of unlawful entry or remaining unlawfully in such building. [1977 ex.s. c 363 § 4.]

9.73.120 Reports—Required, when, contents. (1) Within thirty days after the expiration of an authorization or an extension or renewal thereof issued pursuant to RCW 9.73.090(2) as now or hereafter amended, the issuing or denying judge shall make a report to the administrator for the courts stating that:

(a) An authorization, extension or renewal was applied for;

(b) The kind of authorization applied for;

(c) The authorization was granted as applied for, was modified, or was denied;

(d) The period of recording authorized by the authorization and the number and duration of any extensions or renewals of the authorization;

(e) The offense specified in the authorization or extension or renewal of authorization;

(f) The identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made; and

(g) The character of the facilities from which or the place where the communications were to be recorded.

(2) In addition to reports required to be made by applicants pursuant to federal law, all judges of the superior court authorized to issue authority pursuant to this chapter shall make annual reports on the operation of this chapter to the administrator for the courts. The reports by the judges shall contain (a) the number of applications made; (b) the number of authorizations issued; (c) the respective periods of such authorizations; (d) the number and duration of any renewals thereof; (e) the crimes in connection with which the conversations were sought; (f) the names of the applicants; and (g) such other and further particulars as the administrator for the courts may require.

The chief justice of the supreme court shall annually report to the governor and the legislature on such aspects of the operation of this chapter as he deems appropriate including any recommendations he may care to make as to legislative changes or improvements to effectuate the purposes of this chapter and to assure and protect individual rights. [1977 ex.s. c 363 § 5.]

9.73.130 Recording private communications—Authorization—Application for, contents. Each application for an authorization to record communications or conversations pursuant to RCW 9.73.090 as now or hereafter amended shall be made in writing upon oath or affirmation and shall state:

(1) The authority of the applicant to make such application;

(2) The identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to record a communication or conversation is

sought and the identity of whoever authorized the application;

(3) A particular statement of the facts relied upon by the applicant to justify his belief that an authorization should be issued, including:

(a) The identity of the particular person, if known, committing the offense and whose communications or conversations are to be recorded;

(b) The details as to the particular offense that has been, is being, or is about to be committed;

(c) The particular type of communication or conversation to be recorded and a showing that there is probable cause to believe such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be recorded;

(d) The character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be recorded;

(e) A statement of the period of time for which the recording is required to be maintained, if the character of the investigation is such that the authorization for recording should not automatically terminate when the described type of communication or conversation has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(f) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) Where the application is for the renewal or extension of an authorization, a particular statement of facts showing the results thus far obtained from the recording, or a reasonable explanation of the failure to obtain such results;

(5) A complete statement of the facts concerning all previous applications, known to the individual authorizing and to the individual making the application, made to any court for authorization to record a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each application; and

(6) Such additional testimony or documentary evidence in support of the application as the judge may require. [1977 ex.s. c 363 § 6.]

9.73.140 Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders. Within a reasonable time but not later than thirty days after the termination of the period of the authorization or of extensions or renewals thereof, or the date of the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended, the issuing authority shall cause to be served on the person named in the authorization or application for an authorization, and such other parties to the recorded communications

as the judge may in his discretion determine to be in the interest of justice, an inventory which shall include:

(1) Notice of the entry of the authorization or the application for an authorization which has been denied under RCW 9.73.090 as now or hereafter amended;

(2) The date of the entry of the authorization or the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended;

(3) The period of authorized or disapproved recording; and

(4) The fact that during the period wire or oral communications were or were not recorded.

The issuing authority, upon the filing of a motion, may in its discretion make available to such person or his attorney for inspection such portions of the recorded communications, applications and orders as the court determines to be in the interest of justice. On an ex parte showing of good cause to the court the serving of the inventory required by this section may be postponed or dispensed with. [1977 ex.s. c 363 § 7.]

Chapter 9.81

SUBVERSIVE ACTIVITIES

Sections

9.81.010	Definitions.
9.81.020	Subversive activities made felony—Penalty.
9.81.030	Membership in subversive organization is felony—Penalty.
9.81.040	Disqualification from voting or holding public office.
9.81.050	Dissolution of subversive organizations—Disposition of property.
9.81.060	Public employment—Subversive person ineligible.
9.81.070	Public employment—Determining eligibility—Inquiries—Oath.
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9.81.082	Membership in subversive organization described.
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9.81.100	Public office—Candidate must file affidavit.
9.81.110	Misstatements are punishable as perjury—Penalty.
9.81.120	Constitutional rights—Censorship or infringement.

Anarchy and sabotage: Chapter 9.05 RCW.

Treason: Chapter 9.82 RCW.

9.81.010 Definitions. (1) "Organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

(2) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington, or of any political subdivision of either of them, by revolution, force or violence.

(3) "Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of the United States, or of the state of Washington, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(4) "Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

(5) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington, or any political subdivision of either of them by revolution, force, or violence; or who with knowledge that the organization is an organization as described in subsections (2) and (3) hereof, becomes or remains a member of a subversive organization or a foreign subversive organization. [1953 c 142 § 1; 1951 c 254 § 1.]

Short title—1951 c 254: "This act may be cited as the Subversive Activities Act." [1951 c 254 § 20.]

Severability—1951 c 254: "If any provision, phrase, or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions, phrases, or clauses or applications of this act which can be given effect without the invalid provision, phrase, or clause or application, and to this end the provisions, phrases and clauses of this act are declared to be severable." [1951 c 254 § 18.]

9.81.020 Subversive activities made felony—Penalty. It shall be a felony for any person knowingly and wilfully to:

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of Washington or any political subdivision of either of them, by revolution, force or violence; or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the state of Washington or of any political subdivision of either of them; or

(3) Conspire with one or more persons to commit any such act; or

(4) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization

knowing said organization to be a subversive organization or a foreign subversive organization; or

(5) Destroy any books, records or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than ten thousand dollars, or imprisoned for not more than ten years, or both, at the discretion of the court. [1951 c 254 § 2.]

9.81.030 Membership in subversive organization is felony—Penalty. It shall be a felony for any person after June 1, 1951 to become, or after September 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person upon a plea of guilty or upon conviction of violating any of the provisions of this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court. [1951 c 254 § 3.]

9.81.040 Disqualification from voting or holding public office. Any person who shall be convicted or shall plead guilty of violating any of the provisions of RCW 9.81.020 and 9.81.030, in addition to all other penalties therein provided, shall from the date of such conviction be barred from

(1) Holding any office, elective or appointive, or any other position of profit or trust in, or employment by the government of the state of Washington or of any agency thereof or of any county, municipal corporation or other political subdivision of said state;

(2) Filing or standing for election to any public office in the state of Washington; or

(3) Voting in any election held in this state. [1951 c 254 § 4.]

9.81.050 Dissolution of subversive organizations—Disposition of property. It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the state of Washington and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of Washington a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the state of Washington, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over to the attorney general of Washington. [1951 c 254 § 5.]

9.81.060 Public employment—Subversive person ineligible. No subversive person, as defined in this chapter, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government, or in the administration of the business, of this state, or of any county, municipality, or other political subdivision of this state. [1951 c 254 § 11.]

9.81.070 Public employment—Determining eligibility—Inquiries—Oath. Every person and every board, commission, council, department, court or other agency of the state of Washington or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain whether any person is a subversive person. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury. Every such person, board, commission, council, department, court, or other agency shall require every employee or applicant for employment to state under oath whether or not he or she is a member of the Communist party or other subversive organization, and refusal to answer on any grounds shall be cause for immediate termination of such employee's employment or for refusal to accept his or her application for employment. [1955 c 377 § 1; 1951 c 254 § 12.]

Application forms, licenses—Mention of race or religion prohibited: RCW 43.01.100.

Discrimination in employment: Chapter 49.60 RCW.

9.81.080 Public employment—Inquiries may be dispensed with, when. The inquiries prescribed in preceding sections, other than the written statement to be executed by an applicant for employment and the requirement set forth in RCW 9.81.070, relative to membership in the communist party or other subversive organization, shall not be required as a prerequisite to the employment of any persons in any case in which the employing authority may determine, and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of such persons will not be dangerous to the health of the citizens or the security of the governments of the United States, the state of Washington, or any political subdivision thereof. [1955 c 377 § 2; 1951 c 254 § 13.]

9.81.082 Membership in subversive organization described. For the purpose of *this act, membership in a subversive organization shall be membership in any organization after it has been placed on the list of organizations designated by the attorney general of the United States as being subversive pursuant to executive order No. 9835. [1955 c 377 § 3.]

**Reviser's note:* The term "this act" as used in RCW 9.81.082 appeared in 1955 c 377 § 3 which did not contain any language incorporating it as part of 1951 c 254 nor as part of chapter 9.81 RCW.

9.81.083 Communist party declared a subversive organization. The Communist party is a subversive organization within the purview of chapter 9.81 RCW and membership in the Communist party is a subversive activity thereunder. [1955 c 377 § 4.]

9.81.090 Public employees—Discharge of subversive persons—Procedure—Hearing—Appeal. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The attorney general and the personnel director, and the civil service commission of any county, city or other political subdivision of this state, shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall have the right of reasonable notice, date, time and place of hearing, opportunity to be heard by himself and witnesses on his behalf, to be represented by counsel, to be confronted by witnesses against him, the right to cross-examination, and such other rights which are in accordance with the procedures prescribed by law for the discharge of such person for other reasons. Every person and every board, commission, council, department, or other agency of the state of Washington or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the classified service in this section referred to, shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter, shall promptly report to the special assistant attorney general in charge of subversive activities the fact of and the circumstances surrounding such discharge. Any person discharged under the provisions of this chapter shall have the right within thirty days thereafter to appeal to the superior court of the county wherein said person may reside or wherein he may have been employed for determination by said court as to whether or not the discharge appealed from was justified under the provisions of this chapter. The court shall regularly hear and determine such appeals and the decision of the superior court may be appealed to the supreme court or the court of appeals of the state of Washington as in civil cases. Any person appealing to the superior court may be entitled to trial by jury if he or she so elects. [1971 c 81 § 44; 1951 c 254 § 15.]

9.81.100 Public office—Candidate must file affidavit. No person shall become a candidate for election under the laws of the state of Washington to any public office whatsoever in this state, unless he or she shall file an affidavit that he or she is not a subversive person as defined in this chapter. No declaration of candidacy

shall be received for filing by any election official of any county or subdivision in the state of Washington or by the secretary of state of the state of Washington unless accompanied by the affidavit aforesaid, and there shall not be entered upon any ballot or voting machine at any election the name of any person who has failed or refused to make the affidavit as set forth herein. [1951 c 254 § 16.]

9.81.110 Misstatements are punishable as perjury—Penalty. Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee, shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who wilfully makes a material misstatement of fact (1) in any such written statement, or (2) in any affidavit made pursuant to the provisions of this chapter, or (3) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions pursuant to this chapter, or (4) in any written statement by an applicant for appointment or employment or by an employee in any state aid or private institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury, shall be subject to the penalties of perjury, as prescribed in chapter 9.41 RCW. [1951 c 254 § 17.]

9.81.120 Constitutional rights—Censorship or infringement. Nothing in this chapter shall be construed to authorize, require or establish any military or civilian censorship or in any way to limit or infringe upon freedom of the press or freedom of speech or assembly within the meaning and the manner as guaranteed by the Constitution of the United States or of the state of Washington and no regulation shall be promulgated hereunder having that effect. [1951 c 254 § 19.]

Chapter 9.82 TREASON

Sections	
9.82.010	Defined—Penalty.
9.82.020	Levying war.
9.82.030	Misprision of treason.

Anarchy and sabotage: Chapter 9.05 RCW.

Subversive activities: Chapter 9.81 RCW.

9.82.010 Defined—Penalty. Treason against the people of the state consists in—

- (1) Levying war against the people of the state, or
- (2) Adhering to its enemies, or
- (3) Giving them aid and comfort.

Treason is punishable by death.

No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court. [1909 c 249 § 65; RRS § 2317.]

Treason defined and evidence required: State Constitution Art. 1 § 27.

9.82.020 Levying war. To constitute levying war against the state an actual act of war must be committed. To conspire to levy war is not enough. When persons arise in insurrection with intent to prevent, in general, by force and intimidation, the execution of a statute of this state, or to force its repeal, they shall be guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war. [1909 c 249 § 66; RRS § 2318.]

9.82.030 Misprision of treason. Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a justice of the supreme court or a judge of either the court of appeals or the superior court, shall be guilty of misprision of treason and punished by a fine of not more than one thousand dollars, or by imprisonment in the state penitentiary for not more than five years or in a county jail for not more than one year. [1971 c 81 § 45; 1909 c 249 § 67; RRS § 2319.]

Chapter 9.86

UNITED STATES AND STATE FLAGS, CRIMES RELATING TO

Sections	
9.86.010	"Flag," etc., defined.
9.86.020	Improper use of flag prohibited.
9.86.030	Desecration of flag.
9.86.040	Application of provisions.
9.86.050	Penalty.

Display of national and state flags: RCW 1.20.015.

Flag exercises in schools: RCW 28A.02.030.

State flag: RCW 1.20.010.

9.86.010 "Flag," etc., defined. The words flag, standard, color, ensign or shield, as used in this chapter, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this state, or a copy, picture or representation thereof. [1919 c 107 § 1; RRS § 2675–1.]

9.86.020 Improper use of flag prohibited. No person shall, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or of this state; or

(2) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any

such word, figure, mark, picture, design, drawing or advertisement; or

(3) Expose to public view for sale, manufacture, or otherwise, or to sell, give, or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance. [1919 c 107 § 2; 1909 c 249 § 423; 1901 c 154 § 1; RRS § 2675-2.]

9.86.030 Desecration of flag. No person shall knowingly cast contempt upon any flag, standard, color, ensign or shield, as defined in RCW 9.86.010, by publicly mutilating, defacing, defiling, burning, or trampling upon said flag, standard, color, ensign or shield. [1969 ex.s. c 110 § 1; 1919 c 107 § 3; 1909 c 249 § 423; RRS § 2675-3.]

9.86.040 Application of provisions. This chapter shall not apply to any act permitted by the statutes of the United States or of this state, or by the United States army and navy regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement. [1919 c 107 § 4; RRS § 2675-4.]

9.86.050 Penalty. Any violation of this chapter shall be a gross misdemeanor. [1919 c 107 § 5; RRS § 2675-5.]

Chapter 9.91

MISCELLANEOUS CRIMES

Sections

- 9.91.010 Denial of civil rights—Terms defined.
 - 9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.
 - 9.91.025 Unlawful bus conduct.
 - 9.91.050 Improper use of state seal.
 - 9.91.055 Improper use of state seal—Penalty.
 - 9.91.060 Leaving children unattended in parked automobile.
 - 9.91.090 Fraudulent destruction of insured property.
 - 9.91.110 Metal buyers—Records of purchases—Penalty.
 - 9.91.120 Food stamps and food purchased with stamps—Reselling or purchasing.
 - 9.91.130 Disposal of trash in charity donation receptacle.
- Accountancy practice laws, penalty: RCW 18.04.370.*
- Aeronautics laws and rules, penalty: RCW 47.68.240.*
- Agriculture**
- agricultural enabling act, penalties: RCW 15.66.210.*
 - apple advertising laws and rules, penalty: RCW 15.24.200.*
 - co-ops, penalties: RCW 24.32.320, 24.32.330, 24.32.340.*
 - eggs and egg products, penalties for violations concerning: RCW 69.25.340.*
 - farm labor contractors, violations, penalty: RCW 19.30.150.*
 - fertilizers, minerals, and limes, penalty: RCW 15.54.470.*
 - filled dairy products, penalty: RCW 15.38.050.*
 - honey, penalty for violation of law regulating: RCW 69.28.180, 69.28.185.*
 - honey bees, poisoning, penalty: RCW 15.60.150.*

- horticultural plants and certification act, prohibited acts: Chapter 15.13 RCW.*
- livestock remedies, penalty: RCW 15.52.330.*
- marketing act, penalties: RCW 15.66.210.*
- oleomargarine, penalty: RCW 15.40.050.*
- peaches, standards of grades and packs, inspections, penalty for violations: RCW 15.17.290.*
- soft tree fruits, penalty: RCW 15.28.270.*
- standards of grades and packs, penalties: Chapter 15.17 RCW.*
- Aircraft and airman licensing violations: RCW 14.16.060.*
- Airport zoning violations: RCW 14.12.210.*
- Alcoholic beverages, transfer of identification of age to minor: RCW 66.44.325.*
- All-terrain vehicles**
 - additional violations, penalty: RCW 46.09.130.*
 - operating violations, penalty: RCW 46.09.120, 46.09.190.*
- Amateur radio operators, special motor vehicle license plates, violation of act: RCW 46.16.350.*
- Ambulances and drivers, first aid requirements, penalty: RCW 70.54-.060, 70.54.065.*
- Animals: Title 16 RCW.*
- Antitrust, consumer protection: Chapter 19.86 RCW.*
- Architects licensing laws, penalty: RCW 18.08.460.*
- Auctioneering, county licensing laws, penalty: RCW 36.71.070.*
- Bakeries and bakery products, penalties: RCW 69.12.120.*
- Ballots (see also Elections)**
 - counterfeiting or unlawful possession, penalty: RCW 29.85.010.*
 - disclosing choice of voter, penalty: RCW 29.85.030.*
 - divulging ballot count, penalty: RCW 29.54.035.*
 - tampering with, penalty: RCW 29.85.020.*
 - unlawful printing or distribution of official ballots, penalty: RCW 29.85.040.*
 - unlawful to mislead voter in marking, penalty: RCW 29.85.050.*
- Banks and trust companies**
 - advertising legal services, penalty: RCW 30.04.260.*
 - certification of checks, penalty for violation of regulations: RCW 30.16.010.*
 - commission, etc., to officer or employee to procure loan prohibited, penalty: RCW 30.12.110.*
 - companies, commingling trust property, penalty: RCW 30.04.240.*
 - examinations, penalty for falsification: RCW 30.04.060.*
 - false entries or statements, penalty: RCW 30.12.090.*
 - general penalties for violation of laws concerning: RCW 30.04-.310, 30.12.190.*
 - general penalty for violation of rules and regulations: RCW 30.04.050.*
 - holding companies regulations, penalty: RCW 30.04.230.*
 - loans from trust funds prohibited, penalty: RCW 30.12.120.*
 - preferential transfers in contemplation of insolvency, penalty: RCW 30.44.110.*
 - purchase of assets by officers, etc.: RCW 30.12.050.*
 - receiving deposits when insolvent prohibited, penalty: RCW 30.44.120.*
 - records, destroying or secreting, penalty: RCW 30.12.100.*
 - unlawful use of words indicating, penalty: RCW 30.04.020.*
- Barbering licensing regulations, penalty: RCW 18.16.210.*
- Baseball**
 - minors, penalty for violations concerning: RCW 67.04.150.*
 - penalties for bribery or fraud concerning: RCW 67.04.010, 67.04-.020, 67.04.050.*
- Beauty culture licensing laws, penalty: RCW 18.16.210.*
- Bicycles, bicycle paths, operation of vehicles on prohibited: RCW 35.75.020.*
- Bids on state purchases, interfering with: RCW 43.19.1939.*
- Blind made products, false advertising: RCW 19.06.030, 19.06.040.*
- Boarding homes' licensing act, violations of: Chapter 18.20 RCW.*
- Bodies (see Human remains)*
- Boilers or unfired pressure vessels, inspection certificate required, penalty: RCW 70.79.320.*
- Bonds issued by state, etc., fraud of engraver, penalty: RCW 39.44.101.*

- Boxing and wrestling, penalties for violations of provisions relating to:* RCW 67.08.130, 67.08.140, 67.08.150.
- Brands and marks on animals, obliteration, etc., penalty:* RCW 16.57-.120, 16.57.320, 16.57.360.
- Bribery and grafting by public officers:* RCW 42.20.010.
- Building permit, issuance to person not complying with industrial insurance payroll estimate requirement:* RCW 51.12.070.
- Buildings, public*
 doors, safety requirements, penalty: RCW 70.54.070.
 earthquake resistance standards, penalty: RCW 70.86.040.
- Bulls, permitting to run at large, penalty:* RCW 16.20.040.
- Capitol grounds traffic regulations, penalty for violations:* RCW 46.08.170.
- Cattle, slaughtering and transportation regulations, penalties:* RCW 16.48.320.
- Caustic poisons act, penalty for violation:* RCW 69.36.060.
- Cemeteries*
 embalmers and funeral director laws, penalty: RCW 18.39.220.
 endowment care cemeteries, penalties: RCW 68.40.085, 68.40.090.
 establishment in violation of laws regulating, penalty: RCW 68.56.040.
 mausoleums and columbariums, penalty for violation of construction laws: RCW 68.28.060.
 property, penalties for violations concerning: RCW 68.24.130, 68.24.140, 68.24.150, 68.24.190, 68.56.010.
 record of caskets required when cremation made, penalty: RCW 68.50.250, 68.50.260.
- Charitable trusts, penalty for violations:* RCW 11.110.140.
- Children (see Minors)*
- Chiropody licensing laws, penalty:* RCW 18.22.220.
- Chiropractic licensing laws, penalty:* RCW 18.25.090.
- Cigarettes, unfair cigarette sales act violations:* RCW 19.91.020, 19.91.170.
- Cities and towns*
 budgets in cities over 300,000, penalty for violation of regulations: RCW 35.32A.090.
 cities of the first class, powers to prescribe crimes by ordinance: RCW 35.22.280.
 cities of the second class, powers to prescribe penalties for violation of ordinances: RCW 35.23.440.
 cities of the third class, powers to prescribe penalties for violation of ordinances: RCW 35.24.290.
 city firemen, civil service provisions, penalty for violations: RCW 41.08.210.
 city police, civil service provisions, penalty for violations: RCW 41.12.210.
 commission form, free services to officers and employees prohibited, penalty: RCW 35.17.150.
 operation of vehicles, etc., on bicycle paths prohibited, penalty: RCW 35.75.020.
 pollution of water supply, penalty: RCW 35.88.040.
 towns, power to prescribe penalties for violation of ordinances: RCW 35.27.370.
 unclassified cities, powers to prescribe penalties for violation of ordinances: RCW 35.30.010.
- Civil defense, enforcement of orders, rules, and regulations, penalty:* RCW 38.52.150.
- Civil service for sheriff's office employees, penalty:* RCW 41.14.220.
- Coal mining code violations, penalties:* Chapter 78.40 RCW.
- Code of ethics violation:* RCW 42.22.070.
- Collection agency laws, penalty:* RCW 19.16.430, 19.16.450.
- Colleges*
 interfering by force or violence with any administrator, faculty member or student unlawful—Penalty: RCW 28B.10.570, 28B.10.572, 28B.10.573.
 intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty: RCW 28B-.10.571 through 28B.10.573.
- Commercial feed law, crimes against:* Chapter 15.53 RCW.
- Commercial sprayers and dusters, violations, penalty:* Chapter 17.21 RCW.
- Commission merchants, violations, penalty:* RCW 20.01.460.
- Confections, penalty for violations of law regulating:* RCW 69.20.150.
- Consumer finance business, penalty for violations of laws governing:* RCW 31.08.210.
- Consumer protection, crimes and penalties relating to:* Chapter 19.86 RCW.
- Control of pet animals infested with diseases communicable to humans, violation, penalty:* RCW 16.70.050.
- Controlled atmosphere storage, penalty:* RCW 15.30.250.
- Controlled substances:* Chapter 69.50 RCW.
- Conveyances, fraudulent:* Chapter 19.40 RCW.
- Cosmetology laws, penalty:* RCW 18.16.210.
- Counties*
 budget laws, penalty for violation: RCW 36.40.240.
 building codes and fire regulations, penalty for violation: RCW 36.43.040.
 dog license tax violation, penalty: RCW 36.49.070.
 garbage disposal regulations, penalty for violations: RCW 36.58.020.
 hawkers and auctioneers, penalty for selling without license: RCW 36.71.060.
 officers failing to pay over fees, penalty: RCW 36.18.170.
 officers taking illegal fees, penalty: RCW 36.18.160.
 parks, playgrounds, or other recreational facilities, violation of rules and regulations adopted by county commissioners, penalty: RCW 36.68.080.
 roads and bridges
 construction of approaches, penalty for violation of provisions concerning: RCW 36.75.150.
 general penalty for violation of provisions concerning: RCW 36.75.290.
 use of oil or other material restricted, penalty: RCW 36.86.060.
 trading stamp licenses, penalty: RCW 19.83.050.
 violation of regulations for taking of census for classification of counties: RCW 36.13.070.
- County commissioners, penalty for falsifying or failing to make inventory statement:* RCW 36.32.220.
- County sheriff, penalty for misconduct or nonfeasance:* RCW 36.28.140.
- County treasurer, failure to call for or pay warrants, penalty:* RCW 36.29.070.
- Credit unions:* Chapter 31.12 RCW.
- Crop credit association law, general penalty for violation:* RCW 31.16.320.
- Cruelty to animals, penalties:* Chapter 16.52 RCW.
- Dangerous dogs:* Chapter 16.08 RCW.
- Dental hygienist licensing laws, penalties:* RCW 18.29.100.
- Dentistry practice laws, penalties:* RCW 18.32.310, 18.32.340, 18.32-.350, 18.32.360, 18.32.390.
- Diking and drainage improvement districts, damaging improvements, penalty:* RCW 85.08.690.
- Discrimination, interference with human rights commission, penalty:* RCW 49.60.310.
- Diseased domestic animals, quarantine, penalty:* RCW 16.36.110.
- Diseases, dangerous, contagious, or infectious, penalty for violations concerning control of:* RCW 70.05.120, 70.24.080, 70.54.050.
- Disposal of dead animals, violations, penalty:* RCW 16.68.180.
- Dogs, dangerous:* Chapter 16.08 RCW.
- Doors of buildings used by public, safety requirements, penalty:* RCW 70.54.070.
- Drugs:* Chapters 69.41, 69.50 RCW.
- Earthquake resistance standards for public buildings, penalty:* RCW 70.86.040.
- Eggs and egg products, penalties for violations of law or regulations:* RCW 69.25.340.
- Elections*
 absentee voting law, penalty for violations: RCW 29.36.160.
 bribery of voters, penalty: RCW 29.85.080.
 bribery or coercion of voters, penalty: RCW 29.85.060.
 bribery or fraud in commission form cities, penalty: RCW 29.85.130.

- canvassing of votes law, penalty for violations: RCW 29.62.040.
counterfeiting or unlawful possession of ballots, penalty: RCW 29.85.010.
destroying or defacing election supplies and notices, etc., penalty: RCW 29.85.110.
divulging ballot count, penalty: RCW 29.54.035.
electioneering for hire in commission form cities prohibited, penalty: RCW 29.85.120.
exit polling: RCW 29.51.020.
forgery of signature on nomination paper, penalty: RCW 29.85.140.
fraud as to certificates of nomination, penalty: RCW 29.85.100.
general penalty for violations: Chapter 29.85 RCW.
influencing voters to vote or not to vote by unlawful means, penalty: RCW 29.85.070.
initiative and referendum law, penalties for violations: RCW 29.79.440, 29.79.480, 29.79.490.
misleading voter in marking ballots, penalty: RCW 29.85.050.
officer disclosing choice of voter on ballot, penalty: RCW 29.85.030.
officer tampering with ballots, penalty: RCW 29.85.020.
penalty for failure to transmit returns: RCW 29.54.130.
perjury when vote challenged: RCW 29.85.180.
printing or distributing official ballots unlawfully, penalty: RCW 29.85.040.
recall petition law, penalties for violations: RCW 29.82.170, 29.82.210, 29.82.220.
registration law violations, penalties: RCW 29.85.190, 29.85.200.
repeating or voting twice, penalties concerning: RCW 29.85.210, 29.85.220.
solicitation of bribe by voter in primary election, penalty: RCW 29.85.090.
tampering with or delaying returns, penalty: RCW 29.85.230.
unqualified voter voting, penalty: RCW 29.85.240.
violations by officers generally, penalty: RCW 29.85.170.
voting machines
penalty for tampering with: RCW 29.85.260.
violations by officers, penalty: RCW 29.85.160.
voting violations, penalty: RCW 29.51.230.
- Electrical construction, penalty: RCW 19.29.060.
Electricians and electrical installation laws, schedule of penalties—
Appeal: RCW 19.28.350.
Embalmer and funeral director laws, penalty: RCW 18.39.220.
Endowment care cemeteries, penalties for violations of laws: RCW 68-40.085, 68.40.090.
Engineer and land surveyor laws, penalty: RCW 18.43.120.
Escrow agent, uncertificated: RCW 18.44.140.
Explosives and devices regulated, penalties: Chapter 70.74 RCW.
Facsimile signatures and seals, fraud in use of: RCW 39.62.040.
Family abandonment, penalty: RCW 26.20.030.
Family nonsupport, penalty: RCW 26.20.035.
Farm labor contractors regulations, penalty: RCW 19.30.150.
Filing false or forged instruments, penalty: RCW 40.16.030.
Fire department vehicles and firemen's private cars lighting and identification, penalty: RCW 46.37.188.
Fire protection districts, burning permits, penalty for violation: RCW 52.12.101, 52.12.105.
Firearms in vehicle, penalty: RCW 77.16.250.
Fires, actions for spreading and kindling: RCW 4.24.040, 4.24.050.
Firewood on state lands, permit required to remove, penalty: RCW 76.20.040.
Fireworks
laws or rules, penalty: RCW 70.77.540.
unlawful acts relating to: Chapter 70.77 RCW.
- Fisheries, commercial digging of hard shell clams: RCW 75.28.285.
Flag, failure to display and require ceremony in schools, penalty: RCW 28A.02.030.
Flood control districts, interest in contracts, penalty: RCW 86.09.286.
Flour, white bread, and rolls, penalty for violation of law regulating: RCW 69.08.090.
Food and beverage workers' permit required, penalty: RCW 69.06.060.
Food, drugs, and cosmetics, penalties for violations of act: RCW 69-.04.040, 69.04.060, 69.04.070.
Food fish and shellfish
commercial licenses and permits required—Exemption: RCW 75.28.010.
false or misleading information and reports, penalty: RCW 75.12.430.
fish guards required on diversion devices, penalties, remedies for failure: RCW 75.20.040.
fisheries code violations, general penalties: RCW 75.10.110.
fishways required over dams, etc., penalties: RCW 75.20.060.
hatchery or cultural facility to be provided if fishways impractical, penalty: RCW 75.20.090.
shellfish taking from state oyster reserves or state tidelands: RCW 75.24.050.
theft of food fish, shellfish, or fishing gear: RCW 75.12.090.
- Food locker laws, penalty: RCW 19.32.180.
Forcible entry and detainer, penalty: RCW 59.12.230.
Forest products
false or forged brands, etc., penalties: RCW 76.36.110, 76.36.120.
log patrols, general penalty: RCW 76.40.130.
Forest protection: Chapter 76.04 RCW.
Fraudulent conveyances: Chapter 19.40 RCW.
Gambling, civil action: RCW 4.24.070.
Game and game fish
prohibited acts and penalties: Chapter 77.16 RCW.
trafficking in prohibited: RCW 77.16.040.
Garbage collection, unlawful acts: Chapter 81.77 RCW.
Gas or stink bombs, etc., prohibited, penalty: RCW 70.74.310.
Girls' training school (see Maple Lane School)
Glass doors, safety standards: Chapter 70.89 RCW.
Grain and terminal warehouses, commodity inspections, laws and regulations, penalties for violations: RCW 22.09.310, 22.09.770, 22.09.560.
Healing professions, rebating: RCW 19.68.010.
Health care services, prohibited acts: Chapter 48.44 RCW.
Highways
closure violations, penalty: RCW 47.48.040.
county or city road funds, illegal use of, penalty: RCW 47.08.110.
limited access facilities, violations concerning, penalty: RCW 47.52.120.
littering with glass, debris, etc., penalty, removal: RCW 46.61.645.
permitting escape of load from vehicle: RCW 46.61.655.
pipe lines, etc., across or on highways, penalty for construction without franchise or permit: RCW 47.44.060.
removal of native flora, etc., penalty: RCW 47.40.080.
traffic control devices violations: Chapter 47.36 RCW.
traffic signs, etc., penalty for defacing, etc.: RCW 46.61.080.
- Highways and toll bridges, general penalty for violations of title: RCW 47.04.090.
Honey
penalty for violation of law regulating: RCW 69.28.180.
prohibited acts: RCW 69.28.080, 69.28.090.
Horse racing, penalty for violations of laws and regulations: RCW 67.16.060.
Horses, mules, and asses, permitting to run at large, penalty: RCW 16.13.090.
Hospital licensing required, penalty: RCW 70.41.170.
Hotels
fraud in obtaining accommodations, etc., penalty: RCW 19.48.110.
sanitation and safety requirements, penalty: RCW 70.62.280.
Human remains, penalties for violations concerning: Chapter 68.50 RCW.
Indian grave and records, mutilation or disturbing, penalty: RCW 27.44.010.
Industrial insurance, attorney's fees: RCW 51.52.120, 51.52.132.
Industrial loan companies
doing business for foreign industrial loan company prohibited, penalty: RCW 31.04.250.
violations specified, penalties: RCW 31.04.220.

- Initiative and referendum laws, penalties: RCW 29.79.440, 29.79.480, 29.79.490.*
- Insane (see Mentally ill)*
- Insect pest control rules, violations: RCW 17.24.100.*
- Insurance code*
- agents, brokers, solicitors and adjusters, license required, penalty: RCW 48.17.060.*
 - agents, solicitors or brokers, reporting and accounting premiums, penalty: RCW 48.17.480.*
 - destruction or injury of property to defraud or prejudice the insurer, penalty: RCW 48.30.220.*
 - domestic insurers*
 - corrupt practices as to votes relative to shareholders meetings, etc., penalty: RCW 48.07.060.*
 - illegal dividends or reductions, penalty: RCW 48.08.040.*
 - impairment of capital, penalty: RCW 48.08.050.*
 - penalty for exhibiting false account, etc.: RCW 48.06.190.*
 - solicitation permit required, penalty: RCW 48.06.030.*
 - false claims or proof, etc., penalty: RCW 48.30.230.*
 - fraud and unfair practices violations: Chapter 48.30 RCW.*
 - general penalty for violations: RCW 48.01.080.*
 - health care services, penalty for violation: RCW 48.44.060.*
 - illegal dealing in premiums, penalty: RCW 48.30.190.*
 - misrepresentation in application for insurance, penalty: RCW 48.30.210.*
 - mutual insurers, impairment of surplus, penalty: RCW 48.09.340.*
 - political contributions, penalty: RCW 48.30.110.*
 - premiums to be specified in the policy, penalty for violation: RCW 48.18.180.*
- Insurance, destruction, secretion, abandonment, etc., of property: RCW 48.30.220.*
- Intoxicating liquor (see Liquor control)*
- Ionizing radiation, prohibited acts: Chapter 70.98 RCW.*
- Irrigation and rehabilitation districts, violation of rules: RCW 87.84.090.*
- Judges or justices, addressing persons in unfit, etc., language, penalty: RCW 42.20.110.*
- Labor and industries*
- disobeying subpoena to appear before officer, penalty: RCW 43.22.300.*
 - hotel inspections, penalty for falsifying or hindering, etc.: RCW 70.62.280.*
 - misuse of reports of employers, penalty: RCW 43.22.290.*
 - refusal of entry to factory, etc., penalty: RCW 43.22.310.*
- Labor disputes, obtaining out-of-state personnel for certain purposes: RCW 49.44.100 through 49.44.110.*
- Labor laws*
- blacklisting prohibited, penalty: RCW 49.44.010.*
 - bribery of labor representative, penalties: RCW 49.44.020, 49.44.030.*
 - discrimination, penalty for interference with state board against discrimination: RCW 49.60.310.*
 - female and child labor, penalties for violations: RCW 26.28.070, 49.12.175.*
 - hours of labor, penalties for violations: Chapter 49.28 RCW.*
 - minimum wage and hours act violations, penalty: RCW 49.46.100.*
 - obtaining labor by false recommendation, penalty: RCW 49.44.040.*
 - prohibited practices, penalties for violations: Chapter 49.44 RCW.*
 - prosecution, etc., for forming or joining labor union, etc., prohibited: RCW 49.36.030.*
 - seasonal labor, fraud by employees to secure advances, penalty: RCW 49.40.030.*
 - underground workers safety and health, penalties: RCW 49.24.060, 49.24.380.*
 - wage payment and collection, penalties for violations: RCW 49.48.020, 49.48.040, 49.48.060, 49.52.050, 49.52.090.*
- Land title registration, penalties for violations: RCW 65.12.730, 65.12.740, 65.12.750, 65.12.760.*
- Legislative hearings, failure of subpoenaed witness to attend or testify, etc., penalties: RCW 44.16.120 through 44.16.150.*
- Lie detector and similar tests as condition of employment: RCW 49.44.120, 49.44.130.*
- Limited access facilities (see Highways)*
- Liquor control*
- consumption or serving in clubs, penalty: RCW 66.24.481.*
 - penalties for violations of laws or regulations: Chapter 66.44 RCW.*
 - purchase, attempt, by minor: RCW 66.44.280 through 66.44.292.*
 - records of sales confidential, penalty: RCW 66.16.090.*
 - transfer of identification card prohibited, penalty: RCW 66.20.200.*
- Littering, depositing glass, debris, etc., on highways, beaches, waters, penalty, removal: RCW 46.61.645.*
- Livestock*
- removal from common range, duty, penalty: RCW 16.28.165, 16.28.170.*
 - slaughtering, custom slaughterers, prohibited acts: RCW 16.49.454.*
- Log patrols, general penalty for violations: RCW 76.40.130.*
- Logs, transporting without county log tolerance permit: RCW 46.44.047.*
- Macaroni and macaroni products, penalty for violation of laws regulating: RCW 69.16.170.*
- Maple Lane School, unauthorized entrance to grounds or enticing girls away, etc., penalty: RCW 72.20.065.*
- Marine biological preserve, penalty for violation: RCW 28B.20.320 through 28B.20.324.*
- Marriage*
- certificates, penalty for failure to record: RCW 26.04.110.*
 - license requirements, penalty for violations: RCW 26.04.200, 26.04.210, 26.04.230, 26.04.240.*
- Maternity homes licensing, penalty for unlicensed operation: RCW 18.46.120.*
- Mausoleums and columbariums, penalty for violation of laws concerning construction of: RCW 68.28.060.*
- Meat inspection act: Chapter 16.49A RCW.*
- Mentally ill, private establishments for, licensing violations: RCW 71.12.460.*
- Military affairs offenses defined, penalties: Chapter 38.32 RCW, RCW 38.40.040, 38.40.050, 38.40.110, 38.40.120.*
- Milk and milk products used for animal food, prohibited acts: Chapter 15.37 RCW.*
- Mining leases and contracts, disclosure of information obtained through state's right of entry: RCW 79.01.649.*
- Minors*
- child labor prohibited, penalty: RCW 26.28.070 (see also Labor laws).*
 - enforcement of support for: RCW 74.20.060.*
 - entry to certain places, etc., prohibited, penalty: RCW 26.28.080.*
 - juvenile offenders: Chapter 13.04 RCW.*
 - procuring or possessing tobacco, penalties: RCW 26.28.080.*
- Motor boat safety requirements: RCW 88.12.060.*
- Motor vehicles: RCW 46.63.020.*
- Municipal corporations*
- approving or paying false claim against: RCW 42.24.110.*
 - making false claim against: RCW 42.24.100.*
- Municipal officers, violation of code of ethics, penalty: RCW 42.23.050.*
- Mutual savings banks*
- concealing or destroying evidence, penalty: RCW 32.04.110.*
 - falsification of books, etc., penalty: RCW 32.04.100.*
 - general penalty when penalty not specifically provided: RCW 32.04.130.*
 - specific penalties of RCW 9.24.030, 9.24.040, and 9.24.050 invoked: RCW 32.04.120.*
 - transfer of property or assets due to insolvency or in contemplation of insolvency, penalty for violation of regulation: RCW 32.24.080.*
- Narcotic drugs: Chapter 69.50 RCW.*
- Native flora on state lands or on land adjoining highways and parks, penalty for removal, etc.: RCW 47.40.080.*
- Navigation*
- pilotage on Puget Sound: RCW 88.16.120, 88.16.130, 88.16.150.*
 - violations generally: Chapter 88.08 RCW.*

- Nuisances, civil remedies: Chapter 7.48 RCW.
- Nurses, registered nurses, penalty for violations: RCW 18.88.270.
- Nursing homes, penalty for unlicensed operation: RCW 18.51.150.
- Occupational motor vehicle operators' licenses, violation of restrictions: RCW 46.20.410.
- Offering false or forged instruments for filing: RCW 40.16.030.
- Oil and gas conservation, general penalty for violations of laws or regulations: RCW 78.52.550.
- Operation of unlicensed camper: RCW 46.16.505.
- Optometry laws, penalty for violations: RCW 18.53.150.
- Osteopathy violations, penalties: RCW 18.57.160.
- Parks and recreation, violations in parks specified, penalty: RCW 43.51.180.
- Party line telephones, refusal to yield in emergency, penalty: RCW 70.85.020, 70.85.030.
- Passenger charter carrier act violations, penalty: RCW 81.70.170.
- Patent medicine peddlers licensing, penalty for unlicensed sales: RCW 18.64.047.
- Pawnbrokers and second-hand dealers laws, penalties: RCW 19.60.066.
- Peaches, standards, inspection, penalty for violations: RCW 15.17.290.
- Peddlers, penalty for selling without license: RCW 36.71.060.
- Persons infected with disease
 - exposure to others, penalty: RCW 70.54.050.
 - quarantine or removal of, penalties: RCW 70.20.060, 70.20.070.
- Pesticides, prohibited acts: Chapter 15.58 RCW.
- Pharmacy licensing laws and regulations, penalties: RCW 18.64.140, 18.64.250.
- Physical therapy practice regulations, penalties: RCW 18.74.090.
- Podiatry, general penalty: RCW 18.22.220.
- Poisons: Chapters 69.36, 69.40 RCW.
- Pollution of water (see Water Pollution)
- Pool tables or billiard tables or bowling alley for hire, license required, penalty: RCW 67.14.060.
- Port district regulations adopted by city or county, violations, penalty: RCW 53.08.220.
- Port districts, violations of rules relating to toll tunnels and bridges, penalty: RCW 53.34.190.
- Psychologists licensing and practice law, violations, penalty: RCW 18.83.180.
- Public assistance
 - falsification of application, etc., penalty: RCW 74.08.055.
 - fraudulent practices: RCW 74.08.331.
 - records to be confidential, etc., penalty: RCW 74.04.060.
- Public employment, race or religion not to be included on application forms, etc., penalty: RCW 43.01.110.
- Public libraries, penalties for injuring property or retaining books: RCW 27.12.330, 27.12.340.
- Public officers
 - code of ethics: RCW 42.22.070.
 - misconduct, penalties: Chapter 42.20 RCW.
- Public records, etc., crimes concerning, penalties: Chapter 40.16 RCW.
- Public service companies
 - auto and transport companies, penalty for violation: RCW 81.68.080.
 - motor freight carriers, penalties for violations: RCW 81.80.230, 81.80.355.
 - passengers for hire, failure to file bond or insurance policy, penalty: RCW 46.72.100.
- railroads
 - employee requirements, penalties for violations: RCW 81.40.030, 81.40.050, 81.40.070, 81.40.090, 81.40.100, 81.40.140.
 - equipment, penalties for violations: RCW 81.44.085, 81.44.100, 81.44.105.
 - operating requirements, penalties for violations: RCW 81.48.010, 81.48.020, 81.48.060.
 - property damaged, sabotaged or stolen, penalties: RCW 81.60.070, 81.60.080, 81.60.090.
 - rights-of-way and crossings, etc., penalties: RCW 81.53.210, 81.54.030.
 - shippers and passengers, penalties: RCW 81.56.100, 81.56.120, 81.56.150.
 - regulatory fees, penalty: RCW 81.24.080.
 - securities, penalty: RCW 81.08.120.
 - street railways, penalties for violations: RCW 81.64.110, 81.64.130, 81.64.150, 81.64.170.
 - transfers of property, penalty: RCW 81.12.060.
 - violations of laws and regulations, general penalties: RCW 81.04.380, 81.04.390.
- Public utilities
 - pipeline transporters, safety rules, penalty: RCW 80.28.210.
 - regulatory fees, penalty: RCW 80.24.050.
 - transfers of property, penalty: RCW 80.12.060.
 - violations of laws and regulations, general penalties: RCW 80.04.380, 80.04.390.
- Public works
 - employment of state residents, penalty: RCW 39.16.040.
 - falsification of records, etc., penalty: RCW 39.04.110, 39.12.050.
- Purchasing, state, interfering with bids: RCW 43.19.1939.
- Real estate
 - brokers and salesperson laws, penalty: RCW 18.85.340.
 - mortgages, removal of property from mortgaged premises, penalty: RCW 61.12.030, 61.12.031.
- Rebating, etc., by practitioners of healing professions, penalty: RCW 19.68.010.
- Recall petition laws, penalties: RCW 29.82.170, 29.82.210, 29.82.220.
- Recreational devices, inspection of, penalty: RCW 70.88.020, 70.88.040.
- Referendum and initiative laws, penalties: RCW 29.79.440, 29.79.480, 29.79.490.
- Registered nurses, penalty for violations: RCW 18.88.270.
- Rules of the road: Chapter 46.61 RCW.
- Savings and loan associations
 - advertising as without license: RCW 33.08.010.
 - concealing facts or destroying evidence, etc., penalty: RCW 33.36.060.
 - false statements concerning financial standings, penalty: RCW 33.36.050.
 - falsification of books, etc., penalty: RCW 33.36.040.
 - making prohibited loans or investments, penalty: RCW 33.36.010.
 - preferential transfer of property due to insolvency, penalty: RCW 33.36.030.
 - purchase at discount prohibited to officers, etc., penalty: RCW 33.36.020.
- Schools
 - compulsory attendance
 - penalties: RCW 28A.27.100.
 - penalty for falsification: RCW 28A.87.020.
 - disclosing examination questions, penalty: RCW 28A.87.070.
 - disturbing meetings, penalty: RCW 28A.87.060.
 - failure to deliver books, etc., to successor, penalty: RCW 28A.87.130.
 - grafting by school officials, penalty: RCW 28A.87.090.
 - interfering by force or violence with any administrator, faculty member, or student unlawful—Penalty: RCW 28B.10.570, 28B.10.572, 28B.10.573.
 - intimidating any administrator, faculty member or student by threat of force or violence unlawful—Penalty: RCW 28B.10.571 through 28B.10.573.
- Securities act violations, penalty: RCW 21.20.400 through 21.20.420.
- Sexual psychopaths: Chapter 71.06 RCW.
- Sheep and goats, permitting to run at large, penalty: RCW 16.12.100.
- Sheep disease control, penalty for violation: RCW 16.44.180.
- Shellfish, sanitary control, penalties for violation of law regulating: RCW 69.30.140.
- Sheriff's, penalty for misconduct or nonfeasance: RCW 36.28.140.
- Sheriff's office employees, civil service for, penalty: RCW 41.14.220.
- Ski lifts and other recreational conveyances: RCW 70.88.040.
- Slaughtering and transportation of cattle, violation of laws governing: RCW 16.48.320.
- Snowmobile act
 - additional violations—Penalty: RCW 46.10.130.
 - operating violations, general penalty: RCW 46.10.090, 46.10.190.

Sporting contest, fraud, penalty: RCW 67.24.010.

Stallions and jacks, permitting to run at large, penalty: RCW 16.16.010.

State bonds, fraud by engraver: RCW 39.44.101.

State employees' retirement, falsification of statements, etc., penalty: RCW 41.40.400.

State land inspectors, fraud in carrying out duties, penalty: RCW 79.01.072.

State lands

firewood removal, permit required, penalty: RCW 76.20.040.

removing flora, etc., penalty: RCW 47.40.080.

trespass, etc.: Chapters 79.01, 79.40 RCW.

State treasurer, penalty for embezzlement: RCW 43.08.140.

Steam boilers, safety requirements, penalty: RCW 70.54.080.

Stink or gas bombs prohibited, penalty: RCW 70.74.310.

Support of dependent children—Alternative method—1971 act: Chapter 74.20A RCW.

Swimming pools, violation of health laws and regulations: RCW 70.90.205.

Swine, permitting to run at large: RCW 16.12.010.

Taxation

cigarette tax, penalties: RCW 82.24.100, 82.24.110.

general penalties: RCW 82.32.290.

house trailer excise, penalty: RCW 82.50.090, 82.50.170.

motor vehicle excise, penalties: RCW 82.44.090, 82.44.120.

motor vehicle fuel tax, penalties: RCW 82.36.330, 82.36.380, 82.36.390, 82.36.400.

personal property, disclosure of information unlawful: RCW 84.40.340.

property taxes

listing of property: RCW 84.40.120.

reforestation lands, penalty: RCW 84.28.170.

removal of property to avoid collection of, penalties: RCW 84.56.120, 84.56.200.

retail sales tax, penalties: RCW 82.08.050, 82.08.120.

use tax, penalty: RCW 82.12.040.

Teachers

abuse of a misdemeanor: RCW 28A.87.010.

retirement, falsification of statements, etc., penalty: RCW 41.32.670.

Telephones, party line, refusal to yield in emergency, penalty: RCW 70.85.020, 70.85.030.

Television reception improvement districts, penalty for false statement as to tax exemption: RCW 36.95.190.

Tires

pneumatic, passenger car, selling or offering for sale if under prescribed standards, penalty: RCW 46.37.423.

regrooved, selling or offering for sale if under prescribed standards, penalty: RCW 46.37.424.

selling or operating vehicle with tires not meeting standards of state patrol, penalty: RCW 46.37.425.

Tobacco, etc., minors procuring or possessing, penalties: RCW 26.28.080.

Toll facilities, operation of motor vehicle on, prohibited acts: RCW 46.61.690.

Townships, failure of officer to allow a claim against a town without itemizing and verifying, penalty: RCW 45.52.040.

Trading stamps and premiums, penalty for violations: RCW 19.84.040.

Unclaimed property act, penalties for violations: RCW 63.29.340, 63.29.350.

Unemployment compensation, penalties for violations: Chapter 50.36 RCW.

Unlawful operations of motor vehicle by habitual offender, penalty, procedure to enforce: RCW 46.65.090.

Use of lists of registered voters, violations relating to, penalty: RCW 29.04.100.

Utility poles, attaching objects to prohibited, penalty: RCW 70.54.100.

Venerable diseases, penalty for violation of control of: RCW 70.24.080.

Veterinarian laws and rules, penalty: RCW 18.92.230, 18.92.240.

Vital statistics requirements, penalty for violation: RCW 70.58.280.

Vouchers, public, false certification, penalty: RCW 42.24.100.

Wages (see Labor laws)

Warehouses, grain and terminal, commodity inspections, penalties for violation: RCW 22.09.310, 22.09.340, 22.09.890.

Warehousing deposits, general penalties: Chapter 22.32 RCW.

Washington Caustic Poison Act of 1929: Chapter 69.36 RCW.

Washington Criminal Code: Title 9A RCW.

Washington fresh fruit sales limitation act, violations: RCW 15.21.060.

Washington state patrol retirement fund, falsification of records, etc., to defraud, penalty: RCW 43.43.320.

Water pollution

control, penalty for violations: RCW 90.48.140.

drinking water pollution, etc.: Chapter 70.54 RCW.

pollution of water supply in cities and towns, penalty: RCW 35.88.040.

Weather modification and control, violation of act: RCW 43.27A.080(6).

Weed districts, prevention of agent's right of entry, penalty: RCW 17.04.280.

Weights and measures law and rules, penalties for violations: RCW 19.94.490 through 19.94.510.

Wheat commission act (1961), prohibited acts: RCW 15.63.220, 15.63.230.

Wills, failing to deliver, penalty: RCW 11.20.010.

Workers' compensation, penalties for violations of regulations concerning: Chapter 51.48 RCW, RCW 51.16.140.

X-rays, use in shoe fitting prohibited: RCW 70.98.170.

9.91.010 Denial of civil rights—Terms defined.

Terms used in this section shall have the following definitions:

(1) (a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment, 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 alike to all persons, regardless of race, creed or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited.

(d) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include,

but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in *loco parentis* to direct the education and upbringing of a child under his control is hereby affirmed.

(2) Every person who denies to any other person because of race, creed, or color, the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement, shall be guilty of a misdemeanor. [1953 c 87 § 1; 1909 c 249 § 434; RRS § 2686.]

Application forms, licenses—Mention of race or religion prohibited:
RCW 43.01.100, 43.01.110.

Interference with board against discrimination: RCW 49.60.310.

9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated. Every person who, being employed upon any railway, as engineer, motorman, gripman, conductor, switch tender, fireman, bridge tender, flagman or signalman, or having charge of stations, starting, regulating or running trains upon a railway, or being employed as captain, engineer or other officer of a vessel propelled by steam, or being the driver of any animal or vehicle upon any public highway, street, or other public place, shall be intoxicated while engaged in the discharge of any such duties, shall be guilty of a gross misdemeanor. [1915 c 165 § 2; 1909 c 249 § 275; RRS § 2527.]

Reviser's note: Caption for 1915 c 165 § 2 reads as follows: "Section 2527 [Rem. & Bal.] Intoxication of employees." See *State v. Crothers*, 118 Wash. 226.

Hunting while intoxicated: RCW 77.16.070.

(1987 Ed.)

Operating vehicle under influence of intoxicants or drugs: RCW 46.20.285, 46.52.100, 46.61.502, 46.61.515.

Operating vessel in negligent manner or while under influence of alcohol or drugs: RCW 88.02.095.

Railroads, employees, equipment, operations: Chapters 81.40, 81.44, 81.48 RCW.

Reckless operation of steamboat or engine: RCW 9A.32.060, 9A.32.070.

9.91.025 Unlawful bus conduct. (1) A person is guilty of unlawful bus conduct if while on or in a municipal transit vehicle as defined by RCW 46.04.355 and with knowledge that such conduct is prohibited, he or she:

(a) Smokes or carries a lighted or smoldering pipe, cigar, or cigarette; or

(b) Discards litter other than in designated receptacles; or

(c) Plays any radio, recorder, or other sound-producing equipment except that nothing herein shall prohibit the use of such equipment when connected to earphones that limit the sound to individual listeners or the use of a communication device by an employee of the owner or operator of the municipal transit vehicle; or

(d) Spits or expectorates; or

(e) Carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others except that nothing herein shall prevent a person from carrying a cigarette, cigar, or pipe lighter or carrying a firearm or ammunition in a way that is not otherwise prohibited by law; or

(f) Intentionally disturbs others by engaging in loud or unruly behavior.

(2) Unlawful bus conduct is a misdemeanor. [1984 c 167 § 1.]

9.91.050 Improper use of state seal. It shall be unlawful for any individual, person, firm, association or corporation to use or make any die of the state seal, or any impression thereof, for any use whatsoever, unless written permission has first been obtained for the use of same from the secretary of state. [1947 c 170 § 1; Rem. Supp. 1947 § 10995-1. FORMER PART OF SECTION: 1947 c 170 § 2; Rem. Supp. 1947 § 10995-2, now codified as RCW 9.91.055.]

9.91.055 Improper use of state seal—Penalty. Any person violating the provisions of RCW 9.91.050 shall be guilty of a gross misdemeanor. [1947 c 170 § 2; Rem. Supp. 1947 § 10995-2. Formerly RCW 9.91.050, part.]

9.91.060 Leaving children unattended in parked automobile. Every person having the care and custody, whether temporary or permanent, of minor children under the age of twelve years, who shall leave such children in a parked automobile unattended by an adult while such person enters a tavern or other premises where vinous [,] spirituous [,] or malt liquors are dispensed for consumption on the premises shall be guilty of a gross misdemeanor. [1951 c 270 § 17.]

9.91.090 Fraudulent destruction of insured property. Every person who, with intent to defraud or prejudice

the insurer thereof, shall wilfully injure or destroy any property not specified or included hereinbefore in *this subdivision, which is insured at the time against loss or damage by casualty other than fire, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1981 c 203 § 4; 1909 c 249 § 384; RRS § 2636. Formerly codified as RCW 9.45.110.]

***Reviser's note:** The term "this subdivision" apparently refers to 1909 c 249 §§ 382, 383, and 384 which appear in the session law under the heading "FRAUDULENT INJURY OF VESSEL." Sections 382 and 383 were repealed by 1975 1st ex.s. c 260 § 9A.92.010.

Insurance code, willful destruction or injury of property: RCW 48.30.220.

9.91.110 Metal buyers—Records of purchases—Penalty. (1) It shall be unlawful for any person, firm or corporation engaged in the business of buying or otherwise obtaining new, used or secondhand metals to purchase or otherwise obtain such metals unless a permanent record of the purchase of such metals is maintained: *Provided*, That no such record need be kept of purchases made by or from a manufacturer, remanufacturer or distributor appointed by a manufacturer of such metals.

For the purpose of this section the term "metals" shall mean copper, copper wire, copper cable, copper pipe, copper sheets and tubing, copper bus, aluminum wire, brass pipe, lead, electrolytic nickel and zinc.

(2) The permanent record required by subsection (1) of this section shall contain the following:

- (a) a general description of all property purchased;
- (b) the type and quantity or weight;
- (c) the name, address, driver's license number, and signature of the seller or the person making delivery; and,
- (d) a description of any motor vehicle and the license number thereof used in the delivery of such metals.

The information so recorded shall be retained by the purchaser for a period of not less than one year.

(3) Any violation of this section is punishable, upon conviction, by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. [1971 ex.s. c 302 § 18.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.91.120 Food stamps and food purchased with stamps—Reselling or purchasing. Any person who resells food stamps manufactured under the food stamp program established pursuant to RCW 74.04.500, 74.04.505 and 74.04.510, or food purchased therewith, and any person who knowingly purchases such resold stamps or food, shall (1) if the face value of the stamps or food transferred be one hundred dollars or more, be guilty of a gross misdemeanor and (2) if the face value of the stamps or food transferred be less than one hundred dollars, shall be guilty of a misdemeanor. [1973 2nd ex.s. c 6 § 1.]

Food stamp program: RCW 74.04.500 through 74.04.527.

9.91.130 Disposal of trash in charity donation receptacle. (1) It is unlawful for any person to throw, drop, deposit, discard, or otherwise dispose of any trash, including, but not limited to items that have deteriorated to the extent that they are no longer of monetary value or of use for the purpose they were intended; garbage, including any organic matter; or litter, in or around a receptacle provided by a charitable organization, as defined in RCW 19.09.020(2), for the donation of clothing, property, or other thing of monetary value to be used for the charitable purposes of such organization.

(2) Charitable organizations must post a clearly visible notice on the donation receptacles warning of the existence and content of this section and the penalties for violation of its provisions, as well as a general identification of the items which are appropriate to be deposited in the receptacle.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor, and the fine for such violation shall be not less than fifty dollars for each offense.

(4) Nothing in this section shall preclude a charitable organization which maintains the receptacle from pursuing a civil action and seeking whatever damages were sustained by reason of the violation of the provisions of this section. For a second or subsequent violation of this section, such person shall be liable for treble the amount of damages done by the person, but in no event less than two hundred dollars, and such damages may be recovered in a civil action before any district court judge. [1987 c 385 § 1.]

Severability—1987 c 385: "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." [1987 c 385 § 2.]

Chapter 9.92 PUNISHMENT

Sections	
9.92.005	Penalty assessments in addition to fine or bail forfeiture—Crime victims compensation account.
9.92.010	Punishment of felony when not fixed by statute.
9.92.020	Punishment of gross misdemeanor when not fixed by statute.
9.92.030	Punishment of misdemeanor when not fixed by statute.
9.92.040	Punishment for contempt.
9.92.050	Commitment to state reformatory.
9.92.060	Suspending sentences.
9.92.062	Suspended sentence—Termination date—Application.
9.92.064	Suspended sentence—Termination date, establishment—Modification of terms.
9.92.066	Termination of suspended sentence—Restoration of civil rights.
9.92.070	Payment of fine and costs in installments.
9.92.080	Sentence on two or more convictions or counts.
9.92.090	Habitual criminals.
9.92.100	Prevention of procreation.
9.92.110	Convicts protected—Forfeitures abolished.
9.92.120	Conviction of public officer forfeits trust.
9.92.130	City jail prisoners may be compelled to work.
9.92.140	County jail prisoners may be compelled to work.
9.92.150	Reduction for good behavior.

- 9.92.200 Chapter not to affect dispositions under juvenile justice act.
- 9.92.900 RCW 9.92.050 through 9.92.090 inapplicable to felonies committed on or after July 1, 1984.

Court to fix maximum sentence: RCW 9.95.010.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

Juvenile offenders—Commitment: Chapter 13.04 RCW.

Treatment of prisoners for venereal disease: RCW 70.24.030.

9.92.005 Penalty assessments in addition to fine or bail forfeiture—Crime victims compensation account. See RCW 7.68.035.

9.92.010 Punishment of felony when not fixed by statute. Every person convicted of a felony for which no punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such confinement and fine. [1982 1st ex.s. c 47 § 5; 1909 c 249 § 13; RRS § 2265.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Classification of crimes: Chapter 9A.20 RCW.

9.92.020 Punishment of gross misdemeanor when not fixed by statute. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine. [1982 1st ex.s. c 47 § 6; 1909 c 249 § 15; RRS § 2267.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.030 Punishment of misdemeanor when not fixed by statute. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine. [1982 1st ex.s. c 47 § 7; 1909 c 249 § 14; Code 1881 § 785; RRS § 2266.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.040 Punishment for contempt. A criminal act which at the same time constitutes contempt of court, and has been punished as such, may also be punished as a crime, but in such case the punishment for contempt may be considered in mitigation. [1909 c 249 § 21; RRS § 2273.]

Contempts: Chapters 7.20, 9.23 RCW.

Punishment for contempt mitigates punishment for crime: RCW 7.20.120.

9.92.050 Commitment to state reformatory. Whenever any male person, between the ages of sixteen and thirty years, is convicted of any felony the court may, in its discretion, order such person to be committed to and confined in the Washington state reformatory. [1955 c 246 § 1; 1909 c 249 § 25; RRS § 2277.]

Applicability—1984 c 209: See RCW 9.92.900.

State reformatory: Chapter 72.12 RCW.

9.92.060 Suspending sentences. Whenever any person shall be convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under the age of ten years, or rape, the court may in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by such court, and that the sentenced person be placed under the charge of a parole or peace officer during the term of such suspension, upon such terms as the court may determine: *Provided*, That as a condition to suspension of sentence, the court shall require the payment of the penalty assessment required by RCW 7.68.035: *Provided further*, That as a condition to suspension of sentence, the court may require the convicted person to make such monetary payments, on such terms as the court deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required, and (4) to contribute to a county or interlocal drug fund. In no case shall a sentence be suspended under the provisions of this section unless the person if sentenced to confinement in a penal institution be placed under the charge of a parole officer, who is a duly appointed and acting officer of the institution to which the person is sentenced: *Provided*, That persons convicted in district court may be placed under supervision of a probation officer employed for that purpose. If restitution to the victim has been ordered under subsection (2) of this section, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence. [1987 c 202 § 142; 1982 1st ex.s. c 47 § 8; 1982 1st ex.s. c 8 § 4; 1979 c 29 § 1; 1967 c 200 § 7; 1957 c 227 § 1;

1949 c 76 § 1; 1921 c 69 § 1; 1909 c 249 § 28; 1905 c 24 § 1; Rem. Supp. 1949 § 2280.]

Intent—1987 c 202: See note following RCW 2.04.190.

Applicability—1984 c 209: See RCW 9.92.900.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Intent—**Reports**—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Severability—1967 c 200: See note following RCW 9.45.122.

Probation: RCW 9.95.200 through 9.95.250.

Probation and parole services, provision by counties: RCW 36.01.070.

Restitution

alternative to fine: RCW 9A.20.030.

condition of probation: RCW 9.95.210.

disposition when victim not found or dead: RCW 7.68.290.

9.92.062 Suspended sentence—Termination date—Application. In all cases prior to August 9, 1971 wherein the execution of sentence has been suspended pursuant to RCW 9.92.060, such person may apply to the court by which he was convicted and sentenced to establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. [1971 ex.s. c 188 § 1.]

Applicability—1984 c 209: See RCW 9.92.900.

9.92.064 Suspended sentence—Termination date, establishment—Modification of terms. In the case of a person granted a suspended sentence under the provisions of RCW 9.92.060, the court shall establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. Prior to the entry of an order formally terminating a suspended sentence the court may modify the terms and conditions of the suspension or extend the period of the suspended sentence. [1982 1st ex.s. c 47 § 9; 1971 ex.s. c 188 § 2.]

Applicability—1984 c 209: See RCW 9.92.900.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.92.066 Termination of suspended sentence—Restoration of civil rights. Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his civil rights. Thereupon the court may in its discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. [1971 ex.s. c 188 § 3.]

Applicability—1984 c 209: See RCW 9.92.900.

9.92.070 Payment of fine and costs in installments. Hereafter whenever any judge of any superior court or a district or municipal judge shall sentence any person to pay any fine and costs, the judge may, in the judge's discretion, provide that such fine and costs may be paid in certain designated installments, or within certain designated period or periods; and if such fine and costs shall

be paid by the defendant in accordance with such order no commitment or imprisonment of the defendant shall be made for failure to pay such fine or costs. *Provided*, that the provisions of this section shall not apply to any sentence given for the violation of any of the liquor laws of this state. [1987 c 3 § 4; 1923 c 15 § 1; RRS § 2280-1.]

Severability—1987 c 3: See note following RCW 3.46.020.

Applicability—1984 c 209: See RCW 9.92.900.

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Payment of fine and costs in installments: RCW 10.01.170.

9.92.080 Sentence on two or more convictions or counts. (1) Whenever a person while under sentence of felony shall commit another felony and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms: *Provided*, That any person granted probation pursuant to the provisions of RCW 9.95.210 and/or 9.92.060 shall not be considered to be under sentence of a felony for the purposes of this subsection.

(2) Whenever a person is convicted of two or more offenses which arise from a single act or omission, the sentences imposed therefor shall run concurrently, unless the court, in pronouncing sentence, expressly orders the service of said sentences to be consecutive.

(3) In all other cases, whenever a person is convicted of two or more offenses arising from separate and distinct acts or omissions, and not otherwise governed by the provisions of subsections (1) and (2) of this section, the sentences imposed therefor shall run consecutively, unless the court, in pronouncing the second or other subsequent sentences, expressly orders concurrent service thereof.

(4) The sentencing court may require the secretary of corrections, or his designee, to provide information to the court concerning the existence of all prior judgments against the defendant, the terms of imprisonment imposed, and the status thereof. [1981 c 136 § 35; 1971 ex.s. c 295 § 1; 1925 ex.s. c 109 § 2; 1909 c 249 § 33; RRS § 2285.]

Applicability—1984 c 209: See RCW 9.92.900.

Effective date—1981 c 136: See RCW 72.09.900.

9.92.090 Habitual criminals. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been twice convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in the state penitentiary for not less than ten years.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would

amount to a felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in the state penitentiary for life. [1909 c 249 § 34; 1903 c 86 §§ 1, 2; RRS § 2286.]

Applicability—1984 c 209: See RCW 9.92.900.

9.92.100 Prevention of procreation. Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation. [1909 c 249 § 35; RRS § 2287.]

9.92.110 Convicts protected—Forfeitures abolished. Every person sentenced to imprisonment in any penal institution shall be under the protection of the law, and any unauthorized injury to his person shall be punished in the same manner as if he were not so convicted or sentenced. A conviction of crime shall not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in case of suicide or where a person flees from justice, are abolished. [1909 c 249 § 36; RRS § 2288.]

Inheritance rights of slayers: Chapter 11.84 RCW.

9.92.120 Conviction of public officer forfeits trust. The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterward holding any public office in this state. [1909 c 249 § 37; RRS § 2289.]

Forfeiture or impeachment, rights preserved: RCW 42.04.040.

Misconduct of public officers: Chapter 42.20 RCW.

Vacancy of public office, causes: RCW 42.12.010.

9.92.130 City jail prisoners may be compelled to work. When a person has been sentenced by any municipal or district judge in this state to a term of imprisonment in a city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city. [1987 c 202 § 144; Code 1881 § 2075; RRS § 10189.]

Intent—1987 c 202: See note following RCW 2.04.190.

9.92.140 County jail prisoners may be compelled to work. When a person has been sentenced by a district judge or a judge of the superior court to a term of imprisonment in the county jail, whether in default of payment of a fine, or costs or otherwise; such person may be compelled to work eight hours, each day of such term, in

and about the county buildings, public roads, streets and grounds: *Provided*, This section and RCW 9.92.130 shall not apply to persons committed in default of bail. [1987 c 202 § 145; Code 1881 § 2076; 1867 p 56 § 24; 1858 p 10 § 1; RRS § 10190.]

Intent—1987 c 202: See note following RCW 2.04.190.

Employment of prisoners: RCW 36.28.100.

Working out fine: Chapter 10.82 RCW.

9.92.150 Reduction for good behavior. The sentencing judge of the superior court and the sentencing judge of courts of limited jurisdictions shall have authority and jurisdiction whereby the sentence of a prisoner, sentenced to imprisonment in their respective county jail, may be reduced by up to one-third for good behavior. [1984 c 209 § 1; 1983 c 276 § 1; 1937 c 99 § 1; RRS § 10191-1.]

Effective dates—1984 c 209: "Sections 1 through 26 of this act shall take effect on July 1, 1984, and sections 27 through 32 of this act shall take effect June 30, 1984." [1984 c 209 § 33.]

9.92.200 Chapter not to affect dispositions under juvenile justice act. No provision of this chapter shall authorize a court to suspend or defer the imposition or the execution of a disposition under chapter 13.40 RCW, as now law or hereafter amended. [1981 c 299 § 21.]

9.92.900 RCW 9.92.050 through 9.92.090 inapplicable to felonies committed on or after July 1, 1984. The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.92.050, 9.92.060, 9.92.062, 9.92.064, 9.92.066, 9.92.070, 9.92.080, and 9.92.090. [1984 c 209 § 2; 1981 c 137 § 31.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Severability—1981 c 137: See RCW 9.94A.910.

Chapter 9.94

PRISONERS—STATE PENAL INSTITUTIONS

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9.94.010	Prison riot—Defined.
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Convict-made goods, restriction on sale of: Chapter 72.60 RCW.

Escape and rescue: Chapter 9A.76 RCW.

State institutions: Title 72 RCW.

Treatment of prisoners for venereal diseases: RCW 70.24.030.

9.94.010 Prison riot—Defined. Whenever two or more inmates of a state penal institution assemble for any purpose, and act in such a manner as to disturb the good order of such institution and contrary to the commands of the officers of such institution, by the use of force or violence, or the threat thereof, and whether acting in concert or not, they shall be guilty of prison riot. [1955 c 241 § 1.]

9.94.020 Prison riot—Penalty. Every inmate of a state penal institution who is guilty of prison riot or of voluntarily participating therein by being present at, or by instigating, aiding or abetting the same, shall be punished by imprisonment in the state penitentiary for not less than one year nor more than ten years, which shall be in addition to the sentence being served. [1955 c. 241 § 2.]

9.94.030 Holding person hostage—Interference with officer's duties. Whenever any inmate of a state penal institution shall hold, or participate in holding, any person as a hostage, by force or violence, or the threat thereof, or shall prevent, or participate in preventing an officer of such institution from carrying out his duties, by force or violence, or the threat thereof, he shall be guilty of a felony and upon conviction shall be punished by imprisonment in the state penitentiary for not less than one year nor more than ten years. [1957 c 112 § 1; 1955 c 241 § 3.]

Interfering with public officer: Chapter 9A.76 RCW.
Kidnapping: Chapter 9A.40 RCW.

9.94.040 Weapons—Possession, etc., by prisoner prohibited—Penalty. Every person serving a sentence in any penal institution of this state who, without authorization pursuant to law, while in such penal institution or while being conveyed to or from such penal institution, or while at any penal institution farm or forestry camp of such institution, or while being conveyed to or from any such place, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another, is guilty of a class B felony. The sentence imposed under this section shall be in addition to any sentence being served. [1979 c 121 § 1; 1977 ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 38 § 18. Prior: 1955 c 241 § 4.]

Severability—1979 c 121: "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." [1979 c 121 § 8.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9.94.041 Narcotic drugs, controlled substances—Possession, etc., by prisoners—Penalty. Every person serving a sentence in any penal institution of this state

who, without authorization, while in such penal institution or while being conveyed to or from such penal institution, or while at any penal institution farm or forestry camp of such institution, or while being conveyed to or from any such place, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person or has under his or her control any narcotic drug or controlled substance as defined in chapter 69.50 RCW is guilty of a class C felony. The sentence imposed under this section shall be in addition to any sentence being served. [1979 c 121 § 2.]

9.94.043 Deadly weapons—Possession on premises by person not a prisoner—Penalty. A person, other than a person serving a sentence in a penal institution of this state, is guilty of possession of contraband on the premises of a state correctional institution in the first degree if, without authorization to do so, the person knowingly possesses or has under his or her control a deadly weapon on or in the buildings or adjacent grounds subject to the care, control, or supervision of a state correctional institution. Deadly weapon is used as defined in RCW 9A.04.110: *Provided*, That such correctional buildings, grounds, or property are properly posted pursuant to RCW 9.94.047, and such person has knowingly entered thereon: *Provided further*, That the provisions of this section do not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the correctional institution premises, proceeds directly along an access road to the administration building and promptly checks his or her firearm(s) with the appropriate authorities. The person may reclaim his or her firearm(s) upon leaving, but he or she must immediately and directly depart from the premises.

Possession of contraband on the premises of a state correctional institution in the first degree is a class B felony. [1979 c 121 § 3.]

9.94.045 Narcotic drugs or controlled substances—Possession by person not a prisoner—Penalty. A person, other than a person serving a sentence in a penal institution of this state, is guilty of possession of contraband on the premises of a state correctional institution in the second degree if, without authorization to do so, the person knowingly possesses or has under his or her control any narcotic drug or controlled substance, as defined in chapter 69.50 RCW, on or in the buildings, grounds, or any other real property subject to the care, control, or supervision of a state correctional institution.

Possession of contraband on the premises of a state correctional institution in the second degree is a class C felony. [1979 c 121 § 4.]

9.94.047 Posting of perimeter of premises of institutions covered by RCW 9.94.040 through 9.94.049. The perimeter of the premises of correctional institutions covered by RCW 9.94.040 through 9.94.049 shall be posted at reasonable intervals to alert the public as to

the existence of RCW 9.94.040 through 9.94.049. [1979 c 121 § 5.]

9.94.049 "State correctional institution" defined for purposes of RCW 9.94.043 and 9.94.045. For the purposes of RCW 9.94.043 and 9.94.045, "state correctional institution" means the: Washington corrections center, Washington state penitentiary, Washington state reformatory, McNeil Island corrections center, Purdy corrections center for women, Larch corrections center, Indian Ridge corrections center, Cedar Creek corrections center, the Olympic corrections center, Firland corrections center, Clearwater corrections center, Pine Lodge corrections center, the Twin Rivers corrections center, the special offender center, the proposed five hundred bed facility at Clallam Bay, and other state correctional facilities used solely for the purpose of confinement of convicted felons. [1985 c 350 § 3; 1979 c 121 § 6.]

9.94.050 Officers and guards as peace officers. All officers and guards of state penal institutions, while acting in the supervision and transportation of prisoners, and in the apprehension of prisoners who have escaped, shall have the powers and duties of a peace officer. [1955 c 241 § 5.]

Chapter 9.94A

SENTENCING REFORM ACT OF 1981

Sections

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V. RECOMMENDED SENTENCING GUIDELINES

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- 9.94A.910 Severability—1981 c 137.

9.94A.010 Purpose. The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to add a new chapter to Title 9 RCW designed to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;

(5) Offer the offender an opportunity to improve him or herself; and

(6) Make frugal use of the state's resources. [1981 c 137 § 1.]

Report on Sentencing Reform Act of 1981: "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

9.94A.020 Short title. This chapter may be known and cited as the sentencing reform act of 1981. [1981 c 137 § 2.]

9.94A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commission" means the sentencing guidelines commission.

(2) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(3) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(4) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(5) "Confinement" means total or partial confinement as defined in this section.

(6) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(7) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

(8) (a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" includes a defendant's prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony and is criminal history

as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

(9) "Department" means the department of corrections.

(10) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a fine or restitution. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(11) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(12) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), wilful failure to return from furlough (RCW 72.66.060), or wilful failure to return from work release (RCW 72.65.070); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(13) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(14) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(15)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction.

(16) "Nonviolent offense" means an offense which is not a violent offense.

(17) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(18) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release as defined in this section.

(19) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(20) "Serious traffic offense" means:

(a) Driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(21) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(22) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(23) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(24) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(25) "Victim" means any person who has sustained physical or financial injury to person or property as a direct result of the crime charged.

(26) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in subsection (26)(a) of this section; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under subsection (26) (a) or (b) of this section.

(27) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

Reviser's note: This section was amended by 1987 c 187 § 3, 1987 c 456 § 1, and by 1987 c 458 § 1, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17–35: "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1983 c 163: See note following RCW 9.94A.120.

9.94A.040 Sentencing guidelines commission—Established—Powers and duties. (1) A sentencing guidelines commission is established as an agency of state government.

(2) The commission shall, following a public hearing or hearings:

(a) Devise a series of recommended standard sentence ranges for all felony offenses and a system for determining which range of punishment applies to each offender based on the extent and nature of the offender's criminal history, if any;

(b) Devise recommended prosecuting standards in respect to charging of offenses and plea agreements; and

(c) Devise recommended standards to govern whether sentences are to be served consecutively or concurrently.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) In devising the standard sentence ranges of total and partial confinement under this section, the commission is subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.020.

(5) In carrying out its duties under subsection (2) of this section, the commission shall give consideration to the existing guidelines adopted by the association of superior court judges and the Washington association of prosecuting attorneys and the experience gained through use of those guidelines. The commission shall emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender.

(6) This commission shall conduct a study to determine the capacity of correctional facilities and programs which are or will be available. While the commission need not consider such capacity in arriving at its recommendations, the commission shall project whether the implementation of its recommendations would result in exceeding such capacity. If the commission finds that this result would probably occur, then the commission shall prepare an additional list of standard sentences which shall be consistent with such capacity.

(7) The commission may recommend to the legislature revisions or modifications to the standard sentence ranges and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity.

(8) The commission shall study the existing criminal code and from time to time make recommendations to the legislature for modification.

(9) The commission shall exercise its duties under this section in conformity with chapter 34.04 RCW, as now existing or hereafter amended. [1986 c 257 § 18; 1982 c 192 § 2; 1981 c 137 § 4.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

**9.94A.050 Sentencing guidelines commission—
Research staff—Data, information, assistance—**

Bylaws—Salary of executive officer. The commission shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The commission may request from the office of financial management, the board of prison terms and paroles, administrator for the courts, the department of corrections, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the commission. The commission shall adopt its own bylaws.

The salary for a full-time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03-.040. [1982 c 192 § 3; 1981 c 137 § 5.]

**9.94A.060 Sentencing guidelines commission—
Membership—Appointments—Terms of office—**

Expenses and compensation. (1) The commission consists of fifteen voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, subject to confirmation by the senate.

(2) The voting membership consists of the following:

(a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;

(b) The director of financial management, as an ex officio member;

(c) Until July 1, 1988, the chairman of the board of prison terms and paroles, as an ex officio member, and thereafter the chairman of the clemency and pardons board, as an ex officio member;

(d) Two prosecuting attorneys;

(e) Two attorneys with particular expertise in defense work;

(f) Four persons who are superior court judges;

(g) One person who is the chief law enforcement officer of a county or city;

(h) Three members of the public who are not and have never been prosecutors, attorneys, judges, or law enforcement officers.

In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the attorney members, of the association of superior court judges in respect to the members who are judges, and of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer.

(3) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing four of the initial members for terms of one year, four for terms of two years, and four for terms of three years.

(4) The speaker of the house of representatives and the president of the senate may each appoint two non-voting members to the commission, one from each of the

two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(5) The members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed by their respective houses as provided under RCW 44.04.120, as now existing or hereafter amended. Members shall be compensated in accordance with RCW 43.03.250. [1984 c 287 § 10; 1981 c 137 § 6.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

9.94A.070 Standard sentence ranges—Revisions or modifications—Submission to legislature. Revisions or modifications of standard sentence ranges or other standards, together with any additional list of standard sentence ranges, shall be submitted to the legislature at least every two years. [1986 c 257 § 19; 1981 c 137 § 7.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

9.94A.080 Plea agreements—Discussions—Contents of agreements. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

- (1) Move for dismissal of other charges or counts;
- (2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;
- (3) Recommend a particular sentence outside of the sentence range;
- (4) Agree to file a particular charge or count;
- (5) Agree not to file other charges or counts; or
- (6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

The court shall not participate in any discussions under this section. [1981 c 137 § 8.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.090 Plea agreements—Statement to court as to nature and reasons for agreement—Court approval or disapproval—Sentencing judge not bound. (1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.080, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall, on the record, inform the defendant and the prosecutor that they are not bound by

the agreement and that the defendant may withdraw the defendant's plea of guilty, if one has been made, and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea. [1984 c 209 § 4; 1981 c 137 § 9.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.100 Plea agreements—Criminal history. The prosecuting attorney and the defendant shall each provide the court with their understanding of what the defendant's criminal history is prior to a plea of guilty pursuant to a plea agreement. All disputed issues as to criminal history shall be decided at the sentencing hearing. [1981 c 137 § 10.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.110 Sentencing hearing—Time period for holding—Presentence reports—Victim impact statement and criminal history—Arguments—Record. Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing. The court shall consider the presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys. [1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.120 Sentences. When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (5), and (7) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.

(4) An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than three years, and shall not be eligible for furlough, work release or other authorized leave of absence from the correctional facility during such minimum three year term except for the purpose of commitment to an inpatient treatment facility. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

(a) Devote time to a specific employment or occupation;

(b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;

(c) Pursue a prescribed, secular course of study or vocational training;

(d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment;

(e) Report as directed to the court and a community corrections officer; or

(f) Pay a fine and/or accomplish some community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or a fine. The court may impose a sentence which provides

more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7) (a) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.040 or RCW 9A.44.050 and has no prior convictions for a sex offense or any other felony sexual offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

After receipt of the reports, the court shall then determine whether the offender and the community will benefit from use of this special sexual offender sentencing alternative. If the court determines that both the offender and the community will benefit from use of this provision, the court shall then impose a sentence within the sentence range and, if this sentence is less than six years of confinement, the court may suspend the execution of the sentence and place the offender on community supervision for up to two years. As a condition of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(i) Devote time to a specific employment or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment;

(iii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment;

(iv) Report as directed to the court and a community corrections officer;

(v) Pay a fine, accomplish some community service work, or any combination thereof; or

(vi) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime.

If the offender violates these sentence conditions the court may revoke the suspension and order execution of the sentence. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(b) When an offender is convicted of any felony sexual offense committed before July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of social and health services for evaluation and report to the court on the offender's

amenability to treatment at these facilities. If the secretary of social and health services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

If the offender does not comply with the conditions of the treatment program, the secretary of social and health services may refer the matter to the sentencing court. The sentencing court shall commit the offender to the department of corrections to serve the balance of the term of confinement.

If the offender successfully completes the treatment program before the expiration of the term of confinement, the court may convert the balance of confinement to community supervision and may place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

After June 30, 1993, this subsection (b) shall cease to have effect.

(c) When an offender commits any felony sexual offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his term of confinement, the department of corrections may request the court to convert the balance

of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his community supervision, the court may order the offender to serve out the balance of his community supervision term in confinement in the custody of the department of corrections.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sexual offense committed prior to July 1, 1987.

(8) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(9) If a sentence imposed includes a fine or restitution, the sentence shall specify a reasonable manner and time in which the fine or restitution shall be paid. In any sentence under this chapter the court may also require the offender to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (a) to pay court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required, (b) to make recoupment of the cost of defense attorney's fees if counsel is provided at public expense, (c) to contribute to a county or interlocal drug fund, and (d) to make such other payments as provided by law. All monetary payments shall be ordered paid by no later than ten years after the date of the judgment of conviction.

(10) Except as provided under RCW 9.94A.140(1), a court may not impose a sentence providing for a term of confinement or community supervision which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(11) All offenders sentenced to terms involving community supervision, community service, restitution, or fines shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow implicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer of any change in the offender's address or employment.

(12) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(13) A departure from the standards in RCW 9.94A.400(1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210(2) through (6).

(14) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(15) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision.

(16) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release. [1987 c 456 § 2; 1987 c 402 § 1. Prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12.]

Reviser's note: This section was amended by 1987 c 402 § 1 and by 1987 c 456 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1987 c 402: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 402 § 3.]

Effective date—1986 c 301 § 4: "Section 4 of this act shall take effect July 1, 1987." [1986 c 301 § 8.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17–35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1983 c 163: "Sections 1 through 5 of this act shall take effect on July 1, 1984." [1983 c 163 § 7.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.123 Legislative finding and intent—Commitment of felony sexual offenders after July 1, 1987. The legislature finds that the sexual offender treatment programs at western and eastern state hospitals, while not proven to be totally effective, may be of some benefit in positively affecting the behavior of certain sexual offenders. Given the significance of the problems of sexual assault and sexual abuse of children, it is therefore appropriate to review and revise these treatment efforts.

At the same time, concerns regarding the lack of adequate security at the existing programs must be satisfactorily addressed. In an effort to promote public safety, it is the intent of the legislature to transfer the responsibility for felony sexual offenders from the department of social and health services to the department of corrections.

Therefore, no person committing a felony sexual offense on or after July 1, 1987, may be committed under RCW 9.94A.120(7)(b) to the department of social and health services at eastern state hospital or western state hospital. Any person committed to the department of social and health services under RCW 9.94A.120(7)(b) for an offense committed before July 1, 1987, and still in the custody of the department of social and health services on June 30, 1993, shall be transferred to the custody of the department of corrections. Any person eligible for evaluation or treatment under RCW 9.94A.120(7)(b) shall be committed to the department of corrections. [1987 c 402 § 2; 1986 c 301 § 1.]

Effective date—1987 c 402: See note following RCW 9.94A.120.

9.94A.125 Deadly weapon special verdict—Definition. In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas. [1983 c 163 § 3.]

Effective date—1983 c 163: See note following RCW 9.94A.120.

9.94A.130 Power to defer or suspend sentences abolished—Exceptions. The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984, except for offenders sentenced under RCW 9.94A.120(7)(a), the special sexual offender sentencing alternative, whose sentence may be suspended. [1984 c 209 § 7; 1981 c 137 § 13.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.140 Restitution. (1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days and may set the terms and conditions under which the defendant shall make restitution. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim or defendant. [1987 c 281 § 3; 1982 c 192 § 5; 1981 c 137 § 14.]

Effective date—1987 c 281: See note following RCW 7.68.020.

9.94A.142 Restitution—Offenses committed after July 1, 1985. (1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days and shall set the terms and conditions under which the defendant shall make restitution. Restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses,

but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(2) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or defendant.

(5) This section shall apply to offenses committed after July 1, 1985. [1987 c 281 § 4; 1985 c 443 § 10.]

Effective date—1987 c 281: See note following RCW 7.68.020.

Severability—**Effective date**—1985 c 443: See notes following RCW 7.69.010.

9.94A.150 Leaving correctional facility or release before expiration of sentence prohibited—Exceptions. No person serving a sentence imposed pursuant to this chapter shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) The terms of the sentence may be reduced by earned early release time in accordance with procedures developed and promulgated by the department. The earned early release time shall be for good behavior and good performance, as determined by the department. In no case shall the aggregate earned early release time exceed one-third of the sentence;

(2) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(3) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(4) If the sentence of confinement is in excess of twelve months but not in excess of three years, no more than the final three months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing him or herself in the community. If the sentence of confinement is in excess of three years, no more than the final six months of the sentence may be served in such partial confinement;

(5) The governor may pardon any offender;

(6) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

(7) An offender may leave a correctional facility prior to completion of his sentence if the sentence has been reduced as provided in RCW 9.94A.160. [1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.155 Prisoner escape, release, or furlough—Notification procedures. (1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, work release placement, furlough, or escape, if such notice has been requested in writing about a specific inmate convicted of a violent offense, to all of the following:

(a) The chief of police of the city, if any, in which the inmate will reside, if known, or in which placement will be made in a work release program;

(b) The sheriff of the county in which the inmate will reside, if known, or in which placement will be made in a work release program;

(c) The victim, if any, of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(d) Any witnesses who testified against the inmate in any court proceedings involving the violent offense; and

(e) 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 inmate.

(2) If an inmate convicted of a violent offense escapes from a correctional facility, the department of corrections 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 inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim, if any, of the

crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department 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) The department of corrections 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.

(4) 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) "Next of kin" means a person's spouse, parents, siblings and children.

(5) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [1985 c 346 § 1.]

9.94A.156 Prisoner escape, release, or furlough—Homicide and violent offenses, rights of victims and witnesses. The department of corrections shall provide the victims and next of kin in the case of a homicide and witnesses involved in violent offense cases where a judgment and sentence was entered after October 1, 1983, a statement of the rights of victims and witnesses to request and receive notification under RCW 9.94A.155 and 9.94A.157. [1985 c 346 § 2.]

9.94A.157 Prisoner escape, release, or furlough—Requests for notification. Requests for notification under RCW 9.94A.155 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections. [1985 c 346 § 3.]

9.94A.158 Prisoner escape, release, or furlough—Notification as additional requirement. The notification requirements of RCW 9.94A.155 are in addition to any requirements in RCW 43.43.745 or other law. [1985 c 346 § 4.]

9.94A.159 Prisoner escape, release, or furlough—Consequences of failure to notify. Civil liability shall not result from failure to provide notice required under RCW 9.94A.155 through 9.94A.158, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence. [1985 c 346 § 7.]

9.94A.160 Emergency due to inmate population exceeding correctional facility capacity. If the governor finds that an emergency exists in that the population of

a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.04 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(2) If the emergency occurs prior to July 1, 1988, call the board of prison terms and paroles into an emergency meeting for the purpose of evaluating its guidelines and procedures for release of prisoners under its jurisdiction. The board shall adopt guidelines for the reduction of inmate population to be used in the event the governor calls the board into an emergency meeting under this section. The board shall not, under this subsection, reduce the prison term of an inmate serving a mandatory minimum term under RCW 9.95.040, an inmate confined for treason, an inmate confined for any violent offense as defined by RCW 9.94A.030, or an inmate who has been found to be a sexual psychopath under chapter 71.06 RCW. In establishing these guidelines, the board shall give priority to sentence reductions for inmates confined for nonviolent offenses, inmates who are within six months of a scheduled parole, and inmates with the best records of conduct during confinement. The board shall consider the public safety, the detrimental effect of overcrowding upon inmate rehabilitation, and the best allocation of limited correctional facility resources. Guidelines adopted under this subsection shall be submitted to the senate institutions and house of representatives social and health services committees for their review. This subsection does not require the board to reduce inmate population to or below any certain number. The board may also take any other action authorized by law to modify the terms of prisoners under its jurisdiction;

(3) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1984 c 246 § 1; 1983 c 163 § 4; 1981 c 137 § 16.]

Severability—1984 c 246: "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." [1984 c 246 § 12.]

Effective date—1983 c 163: See note following RCW 9.94A.120.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.165 Emergency in county jails population exceeding capacity. If the governor finds that an emergency exists in that the populations of county jails

exceed their reasonable, maximum capacity in a significant manner as a result of increases in the sentenced felon population due to implementation of chapter 9.94A RCW, the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating the standard ranges and other standards. The commission may adopt any revision or amendment to the standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.04 RCW and shall take effect on the date prescribed by the commission. The legislature shall approve or modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment. The commission shall also analyze how alternatives to total confinement are being provided and used and may recommend other emergency measures that may relieve the overcrowding.

(2) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency. [1984 c 209 § 9.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.170 Term of confinement tolled by unapproved absence. A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented him or herself from supervision without the prior approval of the entity in whose custody the offender has been placed. [1981 c 137 § 17.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.180 Term of partial confinement, work release. (1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day. The offender shall be required as a condition of partial confinement to report to the facility at designated times. An offender may be required to comply with crime-related prohibitions during the period of partial confinement.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release who violates the rules of the work release facility or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders

committed to the state department of corrections. [1987 c 456 § 3; 1981 c 137 § 18.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.190 Terms of more than one year or less than one year—Where served—Reimbursement of costs.

(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided for in subsection (3) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided for in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department of corrections for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400. [1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17–35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.195 Violation of condition or requirement of sentence—Arrest by community corrections officer—Confinement in county jail. If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to submit to a search and seizure of the offender's person, residence, automobile, or other personal property. A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender

shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court, pursuant to a written order. [1984 c 209 § 11.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.200 Noncompliance with condition or requirement of sentence—Procedure—Penalty. (1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the non-compliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may convert a term of partial confinement to total confinement. Any time served in confinement awaiting a hearing on non-compliance shall be credited against any confinement order by the court; and

(c) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of fines or other monetary payments and regarding community service obligations.

(3) Nothing in this section prohibits the filing of escape charges if appropriate. [1984 c 209 § 12; 1981 c 137 § 20.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.210 Which sentences appealable—Procedure—Grounds for reversal—Written opinions. (1) A sentence within the standard range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first offender under RCW 9.94A.120(5) shall also be deemed to be within the standard range for the offense and shall not be appealed.

(2) A sentence outside the sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing judge are not supported by the record which was before the judge or

that those reasons do not justify a sentence outside the standard range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing judges and others in implementing this chapter and in developing a common law of sentencing within the state. [1984 c 209 § 13; 1982 c 192 § 7; 1981 c 137 § 21.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.220 Discharge upon completion of sentence—Certificate of discharge—Counseling after discharge. When an offender has completed the requirements of the sentence, the secretary of the department or his designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge. The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [1984 c 209 § 14; 1981 c 137 § 22.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.230 Vacation of offender's record of conviction. (1) Every offender who has been discharged under RCW 9.94A.220 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another

state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.220; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.220; and (f) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under RCW 9.94A.220.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. [1987 c 486 § 7; 1981 c 137 § 23.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.250 Clemency and pardons board—Membership—Terms—Chairman—Bylaws—Travel expenses—Staff. (1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chairman from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board. [1981 c 137 § 25.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.260 Clemency and pardons board—Petitions for review and commutation of sentences and pardons—Recommendations. The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor. [1981 c 137 § 26.]

Effective date—1981 c 137: See RCW 9.94A.905.

9.94A.270 Probationer assessments. (1) Whenever a punishment imposed under this chapter requires community supervision services to be provided, the sentencing court shall require that the offender pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the probation and which shall be considered as payment or part payment of the cost of providing probation supervision to the probationer. The court may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the court.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the state general fund.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982. [1984 c 209 § 15; 1982 c 207 § 2.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.310 Table 1—Sentencing grid.

(1)

TABLE 1
Sentencing Grid

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XIV	Life Sentence without Parole/Death Penalty									
XIII	23y4m 240– 320	24y4m 250– 333	25y4m 261– 347	26y4m 271– 361	27y4m 281– 374	28y4m 291– 388	30y4m 312– 416	32y10m 338– 450	36y 370– 493	40y 411– 548
XII	12y 123– 164	13y 134– 178	14y 144– 192	15y 154– 205	16y 165– 219	17y 175– 233	19y 195– 260	21y 216– 288	25y 257– 342	29y 298– 397
XI	6y 62– 82	6y9m 69– 92	7y6m 77– 102	8y3m 85– 113	9y 93– 123	9y9m 100– 133	12y6m 129– 171	13y6m 139– 185	15y6m 159– 212	17y6m 180– 240
X	5y 51– 68	5y6m 57– 75	6y 62– 82	6y6m 67– 89	7y 72– 96	7y6m 77– 102	9y6m 98– 130	10y6m 108– 144	12y6m 129– 171	14y6m 149– 198
IX	3y 31– 41	3y6m 36– 48	4y 41– 54	4y6m 46– 61	5y 51– 68	5y6m 57– 75	7y6m 77– 102	8y6m 87– 116	10y6m 108– 144	12y6m 129– 171
VIII	2y 21– 27	2y6m 26– 34	3y 31– 41	3y6m 36– 48	4y 41– 54	4y6m 46– 61	6y6m 67– 89	7y6m 77– 102	8y6m 87– 116	10y6m 108– 144

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
VII	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116
VI	13m 12+- 14	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y6m 46- 61	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102
V	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y 41- 54	5y 51- 68	6y 62- 82	7y 72- 96
IV	6m 3- 9	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y2m 53- 70	6y2m 63- 84
III	2m 1- 3	5m 3- 8	8m 4- 12	11m 9- 12	14m 12+- 16	20m 17- 22	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y 51- 68
II		4m 0-90 Days	6m 2- 9	8m 3- 12	13m 4- 14	16m 12+- 18	20m 14- 22	2y2m 17- 29	3y2m 22- 43	4y2m 33- 57
I		0-60 Days	3m 0-90 Days	4m 2- 6	5m 2- 8	8m 3- 12	13m 4- 14	16m 12+- 18	20m 14- 22	2y2m 17- 29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by 75 percent.

(3) The following additional times shall be added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon as defined in this chapter and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice was armed with a deadly weapon 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 times shall be added to the presumptive range determined under subsection (2) of this section:

- (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)
- (b) 18 months for Burglary 1 (RCW 9A.52.020)
- (c) 12 months for Assault 2 (RCW 9A.36.020), Escape 1 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building other than a dwelling (RCW 9A.52.030), or any drug offense

[1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.320 Table 2—Crimes included within each seriousness level.

TABLE 2
CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

XIV Aggravated Murder 1 (RCW 10.95.020)

- XIII Murder 1 (RCW 9A.32.030)
Homicide by abuse (RCW 9A.32.055)
- XII Murder 2 (RCW 9A.32.050)
- XI Assault 1 (*RCW 9A.36.011)
- X Kidnapping 1 (RCW 9A.40.020)
Rape 1 (RCW 9A.44.040)

- Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))
- Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 and 3 years junior (RCW 69.50.406)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- IX Robbery 1 (RCW 9A.56.200)
Manslaughter 1 (RCW 9A.32.060)
Statutory Rape 1 (RCW 9A.44.070)
Explosive devices prohibited (RCW 70.74.180)
Endangering life and property by explosives with threat to human being (RCW 70.74.270)
Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
Sexual Exploitation, Under 16 (RCW 9.68A.040(2)(a))
Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- VIII Arson 1 (RCW 9A.48.020)
Rape 2 (RCW 9A.44.050)
Promoting Prostitution 1 (RCW 9A.88.070)
Selling heroin for profit (RCW 69.50.410)
- VII Burglary 1 (RCW 9A.52.020)
Vehicular Homicide (RCW 46.61.520)
Introducing Contraband 1 (RCW 9A.76.140)
Statutory Rape 2 (RCW 9A.44.080)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Sexual Exploitation, Under 18 (RCW 9.68A.040(2)(b))
Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- VI Bribery (RCW 9A.68.010)
Manslaughter 2 (RCW 9A.32.070)
Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b), (c), and (d))
Incest 1 (RCW 9A.64.020(1))
- Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)
Manufacture, deliver, or possess with intent to deliver heroin or narcotics from Schedule I or II (RCW 69.50.401(a)(1)(i))
Intimidating a Judge (RCW 9A.72.160)
- V Criminal Mistreatment 1 (RCW 9A.42.020)
Rape 3 (RCW 9A.44.060)
Kidnapping 2 (RCW 9A.40.030)
Extortion 1 (RCW 9A.56.120)
Incest 2 (RCW 9A.64.020(2))
Perjury 1 (RCW 9A.72.020)
Extortionate Extension of Credit (RCW 9A.82.020)
Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
Rendering Criminal Assistance 1 (RCW 9A.76.070)
- IV Robbery 2 (RCW 9A.56.210)
Assault 2 (*RCW 9A.36.021)
Escape 1 (RCW 9A.76.110)
Arson 2 (RCW 9A.48.030)
Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
Malicious Harassment (RCW 9A.36.080)
Wilful Failure to Return from Furlough (RCW 72.66.060)
Hit and Run — Injury Accident (RCW 46.52.020(4))
Vehicular Assault (RCW 46.61.522)
Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana) (RCW 69.50.401(a)(1)(ii) through (iv))
Influencing Outcome of Sporting Event (RCW 9A.82.070)
Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal Mistreatment 2 (RCW 9A.42.030)
Statutory Rape 3 (RCW 9A.44.090)
Extortion 2 (RCW 9A.56.130)
Unlawful Imprisonment (RCW 9A.40.040)
Assault 3 (*RCW 9A.36.031)
Unlawful possession of firearm or pistol by felon (RCW 9A.41.040)
Harassment (RCW 9A.46.020)
Promoting Prostitution 2 (RCW 9A.88.080)
Wilful Failure to Return from Work Release (RCW 72.65.070)
Introducing Contraband 2 (RCW 9A.76.150)
Communication with a Minor for Immoral Purposes (RCW 9.68A.090)

- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 1 (RCW 9A.56.080)
- II** Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Livestock 2 (RCW 9A.56.080)
- Burglary 2 (RCW 9A.52.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- I** Theft 2 (RCW 9A.56.040)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (RCW 69.50.401(d))

[1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3.]

Reviser's note: (1) This section was amended by 1987 c 187 § 4 and by 1987 c 224 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*(2) RCW 9A.36.011, 9A.36.021, and 9A.36.031 take effect July 1, 1988. Until that date, see RCW 9A.36.010, 9A.36.020, and 9A.36.030, respectively.

Effective date—Application—1987 c 224: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions,

and shall take effect on July 1, 1987. It shall apply to crimes committed on or after July 1, 1987." [1987 c 224 § 2.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.330 Table 3—Offender score matrix.

**TABLE 3
OFFENDER SCORE MATRIX**

Prior Adult Convictions

(Score prior convictions for felony anticipatory crimes (attempts, criminal solicitations, and criminal conspiracies) the same as for the completed crime.)

Current Offenses	Serious Violent	Burglary 1	Other Violent	Vehicular Assault/Homicide	Escape
Serious Violent	3	2	2	2	1
Burglary 1	2	2	2	2	1
Other Violent	2	2	2	2	1
Felony Traffic	1	1	1	2	1
Escape	0	0	0	0	1
Burglary 2	1	2	1	1	1
Other Non-Violent	1	1	1	1	1
Drug	1	1	1	1	1

Current Offenses	Burglary 2	Other Felony Traffic	Serious Traffic	Other Non-Violent	Drug
Serious Violent	1	1	0	1	1
Burglary 1	2	1	0	1	1
Other Violent	1	1	0	1	1
Felony Traffic	1	1	1	1	1
Escape	0	0	0	0	0
Burglary 2	2	1	0	1	1
Other Non-Violent	1	1	0	1	1
Drug	1	1	0	1	2

Prior Juvenile Convictions

(Score prior convictions for felony anticipatory crimes (attempts, criminal solicitations, and criminal conspiracies) the same as for the completed crime.)

Current Offenses	Serious Violent	Burglary 1	Other Violent	Vehicular Assault/Homicide	Escape
Serious Violent	3	2	2	2	1/2
Burglary 1	2	2	2	2	1/2
Other Violent	2	2	2	2	1/2
Felony Traffic	1/2	1/2	1/2	2	1/2
Escape	0	0	0	0	1/2
Burglary 2	1/2	2	1/2	1/2	1/2
Other Non-Violent	1/2	1/2	1/2	1/2	1/2
Drug	1/2	1/2	1/2	1/2	1/2

Current Offenses	Burglary 2	Other Felony Traffic	Serious Traffic	Other Non-Violent	Drug
Serious Violent	1/2	1/2	0	1/2	1/2
Burglary 1	1	1/2	0	1/2	1/2
Other Violent	1/2	1/2	0	1/2	1/2
Felony Traffic	1/2	1/2	1/2	1/2	1/2
Escape	0	0	0	0	0
Burglary 2	1	1/2	0	1/2	1/2
Other Non-Violent	1/2	1/2	0	1/2	1/2
Drug	1/2	1/2	0	1/2	1

[1986 c 257 § 24; 1984 c 209 § 18; 1983 c 115 § 4.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

V. RECOMMENDED SENTENCING GUIDELINES

9.94A.340 Equal application. The sentencing guidelines and prosecuting standards apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant. [1983 c 115 § 5.]

9.94A.350 Offense seriousness level. The offense seriousness level is determined by the offense of conviction. Felony offenses are divided into fourteen levels of seriousness, ranging from low (seriousness level I) to high (seriousness level XIV – see RCW 9.94A.320 (Table 2)). [1983 c 115 § 6.]

9.94A.360 Offender score. The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules, partially summarized in Table 3, RCW 9.94A.330, are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Except as provided in subsection (3) of this section, class A prior felony convictions shall always be included in the offender score. Class B prior felony 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 had spent ten consecutive years in the community without being convicted of any felonies. Class C prior felony 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 had spent five consecutive years in the community without being convicted of any felonies. 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 being convicted of any serious traffic or felony traffic offenses. This subsection applies to both adult and juvenile prior convictions. Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.

(3) Include class A juvenile felonies only if the offender was 15 or older at the time the juvenile offense was committed. Include class B and C juvenile felony convictions only if the offender was 15 or older at the time the juvenile offense was committed and the offender was less than 23 at the time the offense for which he or she is being sentenced was committed.

(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) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(a) Prior adult offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses, 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;

(b) Juvenile prior convictions entered or sentenced on the same date shall count as one offense, the offense that yields the highest offender score; and

(c) 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.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) of this section, count two points for each prior adult and

juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for Murder 1 or 2, Assault 1, Kidnaping 1, or Rape 1, count three points for each prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 conviction, and one point for each prior juvenile Burglary 2 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; count one point for each adult, and 1/2 point for each juvenile, prior conviction for each other felony offense or serious traffic offense.

(12) If the present conviction is for a drug offense count two points for each adult prior felony drug offense conviction and one point for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(13) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, or Willful Failure to Return from Work Release, RCW 72.65.070, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(14) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(15) If the present conviction is for Burglary 2, 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 conviction, and one point for each juvenile prior Burglary 2 conviction. [1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17–35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.370 Presumptive sentence. (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings shall be added to the entire presumptive sentence range. The court may impose any sentence within the range that it deems appropriate. All presumptive sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea

agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for in RCW 9.94A.390(2) (c), (d), and (e). [1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17–35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.380 Alternatives to total confinement. For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons if they are not used.

These alternatives include the following sentence conditions that the court may order as substitutes for total confinement: (1) One day of partial confinement or eight hours of community service may be substituted for one day of total confinement; (2) the community service conversion is limited to two hundred forty hours or thirty days. The conversion of total confinement to partial confinement may be applied to all sentences of one year or less, including those for violent offenses. [1984 c 209 § 21; 1983 c 115 § 9.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.383 Community supervision. On all sentences of confinement for one year or less the court may impose up to one year of community supervision. For confinement sentences, unless otherwise ordered by the court, the period of community supervision begins at the date of release from confinement. For nonconfinement sentences, the period of community supervision begins at the date of entry of the judgment and sentence. [1984 c 209 § 22.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.386 Fines. On all sentences under this chapter the court may impose fines according to the following ranges:

Class A felonies	\$0 – 50,000
Class B felonies	\$0 – 20,000
Class C felonies	\$0 – 10,000

[1984 c 209 § 23.]

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.390 Departures from the guidelines. If the sentencing court finds that an exceptional sentence outside the standard range should be imposed in accordance

with RCW 9.94A.120(2), the sentence is subject to review only as provided for in RCW 9.94A.210(4).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(1) Mitigating Circumstances

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law, was significantly impaired (voluntary use of drugs or alcohol is excluded).

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(2) Aggravating Circumstances

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(c) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(d) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of

the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so; or

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or

(iii) The current offense involved the manufacture of controlled substances for use by other parties; or

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or

(v) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional); or

(e) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time; or

(f) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010. [1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.400 Consecutive or concurrent sentences. (1)

(a) Except as provided in (b) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: *Provided*, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and 9.94A.390(2)(e) or any other provision of RCW 9.94A-.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition does not apply in cases involving vehicular assault or vehicular homicide if the victims occupied the same vehicle. However, the sentencing judge may consider multiple victims in such instances as an aggravating circumstance under RCW 9.94A.390.

(b) Whenever a person is convicted of three or more serious violent offenses, as defined in RCW 9.94A.330,

arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's criminal history in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(2) Whenever a person while under sentence of felony commits another felony and is sentenced to another term of imprisonment, the latter term shall not begin until expiration of all prior terms.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) However, in the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences. [1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.410 Anticipatory offenses. For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the crime, and multiplying the range by 75 percent.

In calculating an offender score, count each prior conviction as if the present conviction were for the completed offense. When these convictions are used as criminal history, score them the same as a completed crime. [1986 c 257 § 29; 1984 c 209 § 26; 1983 c 115 § 12.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Effective dates—1984 c 209: See note following RCW 9.92.150.

9.94A.420 Presumptive ranges that exceed the statutory maximum. If the presumptive sentence duration given in the sentencing grid exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence. [1983 c 115 § 13.]

VI. RECOMMENDED PROSECUTING STANDARDS FOR CHARGING AND PLEA DISPOSITIONS

9.94A.430 Introduction. These standards are intended solely for the guidance of prosecutors in the state of Washington. They are not intended to, do not and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state. [1983 c 115 § 14.]

9.94A.440 Evidentiary sufficiency. (1) Decision not to prosecute.

STANDARD: A Prosecuting Attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) **Contrary to Legislative Intent** – It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) **Antiquated Statute** – It may be proper to decline to charge where the statute in question is antiquated in that:

(i) It has not been enforced for many years; and

(ii) Most members of society act as if it were no longer in existence; and

(iii) It serves no deterrent or protective purpose in today's society; and

(iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) **De Minimus Violation** – It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) **Confinement on Other Charges** – It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge – It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution – It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant – It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity – It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request – It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-

finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder
 1st Degree Murder
 2nd Degree Murder
 1st Degree Kidnaping
 1st Degree Assault
 1st Degree Rape
 1st Degree Robbery
 1st Degree Statutory Rape
 1st Degree Arson
 2nd Degree Kidnaping
 2nd Degree Assault
 2nd Degree Rape
 2nd Degree Robbery
 1st Degree Burglary
 1st Degree Manslaughter
 2nd Degree Manslaughter
 1st Degree Extortion
 Indecent Liberties
 2nd Degree Statutory Rape
 Incest
 Vehicular Homicide
 Vehicular Assault
 3rd Degree Rape
 3rd Degree Statutory Rape
 2nd Degree Extortion
 1st Degree Promoting Prostitution
 Intimidating a Juror
 Communication with a Minor
 Intimidating a Witness
 Intimidating a Public Servant
 Bomb Threat (if against person)
 3rd Degree Assault
 Unlawful Imprisonment
 Promoting a Suicide Attempt
 Riot (if against person)

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson
 1st Degree Escape
 2nd Degree Burglary
 1st Degree Theft
 1st Degree Perjury
 1st Degree Introducing Contraband
 1st Degree Possession of Stolen Property
 Bribery
 Bribing a Witness
 Bribe received by a Witness
 Bomb Threat (if against property)
 1st Degree Malicious Mischief
 2nd Degree Theft
 2nd Degree Escape
 2nd Degree Introducing Contraband

2nd Degree Possession of Stolen Property
 2nd Degree Malicious Mischief
 1st Degree Reckless Burning
 Taking a Motor Vehicle without Authorization
 Forgery
 2nd Degree Perjury
 2nd Degree Promoting Prostitution
 Tampering with a Witness
 Trading in Public Office
 Trading in Special Influence
 Receiving/Granting Unlawful Compensation
 Bigamy
 Eluding a Pursuing Police Vehicle
 Wilful Failure to Return from Furlough
 Riot (if against property)
 Thefts of Livestock

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(1) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(a) Will significantly enhance the strength of the state's case at trial; or

(b) Will result in restitution to all victims.

(2) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(a) Charging a higher degree;

(b) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

GUIDELINES/COMMENTARY:

Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(1) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(2) The completion of necessary laboratory tests; and

(3) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(1) Probable cause exists to believe the suspect is guilty; and

(2) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(3) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(1) Polygraph testing;

(2) Hypnosis;

(3) Electronic surveillance;

(4) Use of informants.

Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached. [1986 c 257 § 30; 1983 c 115 § 15.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

9.94A.450 Plea dispositions. STANDARD: (1) Except as provided in subsection (2) of this section, a defendant will normally be expected to plead guilty to the charge or charges which adequately describe the nature of his or her criminal conduct or go to trial.

(2) In certain circumstances, a plea agreement with a defendant in exchange for a plea of guilty to a charge or charges that may not fully describe the nature of his or her criminal conduct may be necessary and in the public interest. Such situations may include the following:

(a) Evidentiary problems which make conviction on the original charges doubtful;

(b) The defendant's willingness to cooperate in the investigation or prosecution of others whose criminal conduct is more serious or represents a greater public threat;

(c) A request by the victim when it is not the result of pressure from the defendant;

(d) The discovery of facts which mitigate the seriousness of the defendant's conduct;

(e) The correction of errors in the initial charging decision;

(f) The defendant's history with respect to criminal activity;

(g) The nature and seriousness of the offense or offenses charged;

(h) The probable effect on witnesses. [1983 c 115 § 16.]

9.94A.460 Sentence recommendations. STANDARD:

The prosecutor may reach an agreement regarding sentence recommendations.

The prosecutor shall not agree to withhold relevant information from the court concerning the plea agreement. [1983 c 115 § 17.]

9.94A.905 Effective date of RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, 9.94A.250, 9.94A.260—Sentences apply to felonies committed after June 30, 1984. RCW 9.94A.080 through 9.94A.130, 9.94A.150 through 9.94A.230, and 9.94A.250 and 9.94A.260 shall take effect on July 1, 1984. The sentences required under this chapter shall be prescribed in each sentence which occurs for a felony committed after June 30, 1984. [1981 c 137 § 28.]

9.94A.910 Severability—1981 c 137. 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. [1981 c 137 § 41.]

Chapter 9.95

INDETERMINATE SENTENCES

(Formerly: Prison terms, paroles, and probation)

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- 9.95.900 RCW 9.95.003 through 9.95.052, 9.95.070 through 9.95.265, 9.95.350, 9.95.360 inapplicable to felonies committed on or after July 1, 1984.

Commitments and executions: Chapter 10.70 RCW.

Correctional institution for male felons—Reception and classification center: Chapter 72.13 RCW.

Counties may provide probation and parole services: RCW 36.01.070.

Form of sentence to penitentiary: RCW 10.64.060.

Interstate parole and probation hearing procedures: Chapter 9.95B RCW.

Leaves of absence for inmates: RCW 72.01.370, 72.01.380.

Probation and parole, transfer of certain powers, duties: Chapter 72.04A RCW.

State penitentiary: Chapter 72.08 RCW.

State reformatory: Chapter 72.12 RCW.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

Western interstate corrections compact, board members may hold hearings: RCW 72.70.040.

9.95.001 Board of prison terms and paroles redesignated as indeterminate sentence review board. (Effective until June 30, 1992.) On July 1, 1986, the board of prison terms and paroles shall be redesignated the indeterminate sentence review board. The newly designated board shall retain the same membership and staff as the previously designated board of prison terms and paroles. References to "the board" or "board of prison terms and paroles" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the indeterminate sentence review board. [1986 c 224 § 2; (i) 1935 c 114 § 1; RRS § 10249-1. (ii) 1947 c 47 § 1; Rem. Supp. 1947 § 10249-1a. Formerly RCW 43.67.010.]

Legislative finding—1986 c 224 (Effective until June 30, 1992): "The legislature finds that a process for review of duration of confinement and release decisions for persons convicted of crimes committed before July 1, 1984, must be available after the board of prison terms and paroles ceases to exist. A transitional agency, the indeterminate sentence review board, is created to review such decisions until 1992 when all of the functions, powers, and duties previously performed by the indeterminate sentence review board will be transferred to the superior courts of the state of Washington." [1986 c 224 § 1.]

Effective date—1986 c 224: "Sections 1 through 13 of this act shall take effect July 1, 1986." [1986 c 224 § 16.]

Severability—1986 c 224: "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." [1986 c 224 § 17.]

Sections repealed June 30, 1992: "The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1992:

- (1) Section 1 of this 1986 act (uncodified);
- (2) Section 1, chapter 114, Laws of 1935, section 1, chapter 47, Laws of 1947, section 2 of this 1986 act and RCW 9.95.001;
- (3) Section 9, chapter 340, Laws of 1955, section 1, chapter 32, Laws of 1959, section 9, chapter 98, Laws of 1969, section 8, chapter 34, Laws of 1975-'76 2nd ex. sess., section 3 of this 1986 act and RCW 9.95.003;
- (4) Section 10, chapter 340, Laws of 1955, section 2, chapter 32, Laws of 1959, section 4 of this 1986 act and RCW 9.95.005;

(5) Section 3, chapter 32, Laws of 1959, section 1, chapter 63, Laws of 1975-'76 2nd ex. sess., section 5 of this 1986 act and RCW 9.95.007;

(6) Section 24, chapter 137, Laws of 1981, section 8, chapter 192, Laws of 1982, section 1, chapter 279, Laws of 1985, section 6 of this 1986 act and RCW 9.95.009;

(7) Section 7 of this 1986 act and RCW 9.95.[011];

(8) Section 1, chapter 138, Laws of 1961, section 8 of this 1986 act and RCW 9.95.015; and

(9) Section 11 of this 1986 act and RCW 9.95.[017]." [1986 c 224 § 14.]

9.95.0011 Indeterminate sentencing review board—Transfer of powers, duties, and functions to superior courts. (1) The indeterminate sentencing review board shall cease to exist on June 30, 1992, and all of its powers, duties, and functions with respect to persons convicted of crimes committed before July 1, 1984, shall be transferred to the superior courts of the state of Washington. Prior to June 30, 1992, the board shall review each inmate and prepare a report for the superior courts. This report shall include a recommendation regarding the offender's suitability for parole and appropriate parole conditions. The sentencing judge or his or her successor in the county of conviction shall thereafter have full jurisdiction and authority over such offenders. These duties may be delegated to commissioners. Actions taken by commissioners shall be in the form of a report and recommendation to the sentencing judge or his or her successors who have sole authority to determine duration of confinement or parole release.

(2) The indeterminate sentence review board, Washington association of prosecuting attorneys, Washington defender association, department of corrections, administrator for the courts, and office of financial management shall prepare an implementation plan to accomplish transfer of the board's powers, duties, and functions to the superior courts of the state of Washington. The plan shall include a detailed fiscal analysis and recommended formulas and procedures for the reimbursement of costs to local governments. This plan shall be presented to the 1990 legislature.

(3) On July 1, 1992, all documents, records, files, equipment, and other tangible property of the indeterminate sentencing review board shall be transferred to the department of corrections. The department of corrections shall assist the judiciary in fulfilling its responsibilities under this chapter, including the preparation of written recommendations.

(4) On July 1, 1992, references to the "board" or "the indeterminate sentence review board" contained in this chapter, chapters 7.68, 9.95, 9.96, 71.06, and 72.04A RCW, and RCW 9A.44.045 and 72.68.031 are deemed to refer to the superior court of the state of Washington that originally sentenced the offender to prison. [1986 c 224 § 12.]

Legislative finding—Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.0012 Legislative intent—Reimbursement of costs to counties. It is the intent of the legislature that costs incurred by the counties of the state of Washington as a result of the transfer of the functions, duties, and

powers of the indeterminate sentencing review board on July 1, 1992, to the superior courts of the state of Washington shall be reimbursed to the counties by the state of Washington. The 1990 legislature shall consider the recommended formulas and procedures for reimbursement presented in the implementation plan prepared by the indeterminate sentencing review board, administrator for the courts, Washington association of prosecuting attorneys, Washington defender association, department of corrections, and office of financial management. [1986 c 224 § 13.]

Legislative finding—Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.003 Appointment of board members—Qualifications—Salaries and travel expenses—Employees. (Effective until June 30, 1992.) The board shall consist of a chairman and six other members, each of whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a term of five years, and until his or her successor is appointed and qualified. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled by appointment by the governor with the consent of the senate. In the event of the inability of any member to act, the governor shall appoint some competent person to act in his stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chairman at the governor's pleasure.

The members of the board and its officers and employees shall not engage in any other business or profession or hold any other public office; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

The board may employ, and fix, with the approval of the governor, the compensation of and prescribe the duties of a secretary and such officers, employees, and assistants as may be necessary, and provide necessary quarters, supplies, and equipment. [1986 c 224 § 3; 1975-'76 2nd ex.s. c 34 § 8; 1969 c 98 § 9; 1959 c 32 § 1; 1955 c 340 § 9. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.020.]

Legislative finding—Effective date—Severability—Sections repealed—1986 c 224: See notes following RCW 9.95.001.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.005 Board meetings—Quarters at institutions. (Effective until June 30, 1992.) The board shall meet at the penitentiary and the reformatory at such times as may be necessary for a full and complete study of the cases of all convicted persons whose durations of confinement are to be determined by it or whose applications for parole come before it. Other times and places of meetings may also be fixed by the board.

The superintendents of the different institutions shall provide suitable quarters for the board and assistants while in the discharge of their duties. [1986 c 224 § 4; 1959 c 32 § 2; 1955 c 340 § 10. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.030.]

Legislative finding—Effective date—Severability—Sections repealed—1986 c 224: See notes following RCW 9.95.001.

9.95.007 Transaction of board's business in panels—Action by full board. (Effective until June 30, 1992.) The board may meet and transact business in panels. Each board panel shall consist of at least two members of the board. In all matters concerning the internal affairs of the board and policy-making decisions, a majority of the full board must concur in such matters. The chairman of the board with the consent of a majority of the board may designate any two members to exercise all the powers and duties of the board in connection with any hearing before the board. If the two members so designated cannot unanimously agree as to the disposition of the hearing assigned to them, such hearing shall be reheard by the full board. All actions of the full board shall be by concurrence of a majority of the board members. [1986 c 224 § 5; 1975-'76 2nd ex.s. c 63 § 1; 1959 c 32 § 3. Formerly RCW 43.67.035.]

Legislative finding—Effective date—Severability—Sections repealed—1986 c 224: See notes following 9.95.001.

9.95.009 Board of prison terms and paroles—Existence ceases July 1, 1986—Reductions in membership—Continuation of functions. (Effective until June 30, 1992.) (1) On July 1, 1986, the board of prison terms and paroles shall be redesignated as the indeterminate sentencing review board. The board's membership shall be reduced as follows: On July 1, 1986, and on July 1st of each year until 1992, the number of board members shall be reduced in a manner commensurate with the board's remaining workload as determined by the office of financial management based upon its population forecast for the indeterminate sentencing system and in conjunction with the budget process. To meet the statutory obligations of the indeterminate sentence review board, the number of board members shall not be reduced to fewer than three members, although the office of financial management may designate some or all members as part-time members and specify the extent to which they shall be less than full-time members. Any reduction shall take place by the expiration, on that date, of the term or terms having the least time left to serve.

(2) After July 1, 1984, the board shall continue its functions with respect to persons convicted of crimes committed prior to July 1, 1984, and committed to the

department of corrections. When making decisions on duration of confinement, and parole release under RCW 9.95.100 and 9.95.110, the board shall consider the purposes, standards, and sentencing ranges adopted pursuant to RCW 9.94A.040 and the minimum term recommendations of the sentencing judge and prosecuting attorney, and shall attempt to make decisions reasonably consistent with those ranges, standards, purposes, and recommendations: *Provided*, That the board and its successors shall give adequate written reasons whenever a minimum term or parole release decisions [decision] is made which is outside the sentencing ranges adopted pursuant to RCW 9.94A.040. In making such decisions, the board and its successors shall consider the different charging and disposition practices under the indeterminate sentencing system. [1986 c 224 § 6; 1985 c 279 § 1; 1982 c 192 § 8; 1981 c 137 § 24.]

Legislative finding—Effective date—Severability—Sections repealed—1986 c 224: See notes following RCW 9.95.001.

Contingency—1985 c 279: "If specific funding for the purposes of this act, referencing this act by bill number, is not provided in the omnibus appropriations act enacted before July 1, 1985, this act shall be null and void." [1985 c 279 § 2.]

Reviser's note: 1985 ex.s. c 6, the 1985-'87 omnibus appropriations act, provides specific funding for this act. See 1985 ex.s. c 6 § 224.

Severability—1981 c 137: See RCW 9.94A.910.

9.95.010 Court to fix maximum sentence. When a person is convicted of any felony, except treason, murder in the first degree, or carnal knowledge of a child under ten years, and a new trial is not granted, the court shall sentence such person to the penitentiary, or, if the law allows and the court sees fit to exercise such discretion, to the reformatory, and shall fix the maximum term of such person's sentence only.

The maximum term to be fixed by the court shall be the maximum provided by law for the crime of which such person was convicted, if the law provides for a maximum term. If the law does not provide a maximum term for the crime of which such person was convicted the court shall fix such maximum term, which may be for any number of years up to and including life imprisonment but in any case where the maximum term is fixed by the court it shall be fixed at not less than twenty years. [1955 c 133 § 2. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Punishment: Chapter 9.92 RCW.

9.95.011 Minimum terms. (Effective until June 30, 1992.) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.040, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1)

through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, or 9.95.125. [1986 c 224 § 7.]

Legislative finding—Effective date—Severability—Sections repealed—1986 c 224: See notes following RCW 9.95.001.

9.95.015 Finding of fact or special verdict establishing defendant armed with deadly weapon. (Effective until June 30, 1992.) In every criminal case wherein conviction would require the board to determine the duration of confinement, or the court to make such determination for persons committed after July 1, 1986, for crimes committed before July 1, 1984, and wherein there has been an allegation and evidence establishing that the accused was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused was armed with a deadly weapon, as defined by RCW 9.95.040, at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the defendant was armed with a deadly weapon, as defined in RCW 9.95.040, at the time of the commission of the crime. [1986 c 224 § 8; 1961 c 138 § 1.]

Legislative finding—Effective date—Severability—Sections repealed—1986 c 224: See notes following RCW 9.95.001.

9.95.017 Criteria for confinement and parole. (Effective until June 30, 1992.) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release. These proposed criteria shall be submitted for consideration by the 1987 legislature. [1986 c 224 § 11.]

Legislative finding—Effective date—Severability—Sections repealed—1986 c 224: See notes following RCW 9.95.001.

9.95.020 Duties of superintendents of penal institutions. If the sentence of a person so convicted is not suspended by the court, the superintendent of the penitentiary or the superintendent of the reformatory shall receive such person, if committed to his institution, and imprison him until released under the provisions of this chapter or through the action of the governor. [1955 c 133 § 3. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.028 Statement of prosecuting attorney provided to department, when. It is the intent of the legislature to expedite the inmate classification process of the department of corrections. The statement of the prosecuting attorney regarding a convicted criminal defendant should be prepared and made available to the department at the time the convicted person is placed in the custody of the department. [1984 c 114 § 1.]

9.95.030 Facts to be furnished board of prison terms and paroles. At the time the convicted person is transported to the custody of the department of corrections, the board of prison terms and paroles shall obtain from the sentencing judge and the prosecuting attorney, a statement of all the facts concerning the convicted person's crime and any other information of which they may be possessed relative to him, and the sentencing judge and the prosecuting attorney shall furnish the board of prison terms and paroles with such information. The sentencing judge and prosecuting attorney shall indicate to the board of prison terms and paroles, for its guidance, what, in their judgment, should be the duration of the convicted person's imprisonment. [1984 c 114 § 2; 1955 c 133 § 4. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.031 Statement of prosecuting attorney. Whenever any person shall be convicted of a crime and who shall be sentenced to imprisonment or confinement in the Washington state penitentiary or the Washington state reformatory, it shall be the duty of the prosecuting attorney who prosecuted such convicted person to make a statement of the facts respecting the crime for which the prisoner was tried and convicted, and include in such statement all information that he can give in regard to the career of the prisoner before the commission of the crime for which he was convicted and sentenced, stating to the best of his knowledge whether the prisoner was industrious and of good character, and all other facts and circumstances that may tend to throw any light upon the question as to whether such prisoner is capable of again becoming a good citizen. [1929 c 158 § 1; RRS § 10254.]

Reviser's note: This section and RCW 9.95.032 antedate the 1935 act (1935 c 114), which created the board of prison terms and paroles. They were not expressly repealed thereby, although part of section 2 of the 1935 act (RCW 9.95.030) contains similar provisions. The effect of 1935 c 114 (as amended) upon other unrepealed prior laws is discussed in *Lindsey v. Superior Court*, 33 Wn. (2d) 94 at pp 99-100.

9.95.032 Statement of prosecuting attorney—Delivery of statement. Such statement shall be signed by the prosecuting attorney and approved by the judge by whom the judgment was rendered and shall be delivered to the sheriff, traveling guard, department of corrections personnel, or other officer executing the sentence, and a copy of such statement shall be furnished to the defendant or his attorney. Such officer shall deliver the statement, at the time of the prisoner's commitment, to the superintendent of the institution to which such prisoner has been sentenced and committed. The superintendent shall make such statement available for use by the board

of prison terms and paroles. [1984 c 114 § 3; 1929 c 158 § 2; RRS § 10255.]

9.95.040 Board to fix duration of confinement—Minimum terms prescribed for certain cases. The board shall fix the duration of confinement for persons committed by the court before July 1, 1986, for crimes committed before July 1, 1984. Within six months after the admission of the convicted person to the penitentiary, reformatory, or such other state penal institution as may hereafter be established, the board shall fix the duration of his confinement. The term of imprisonment so fixed shall not exceed the maximum provided by law for the offense of which he was convicted or the maximum fixed by the court where the law does not provide for a maximum term.

The following limitations are placed on the board or the court for persons committed to prison on or after July 1, 1986, for crimes committed before July 1, 1984, with regard to fixing the duration of confinement in certain cases, notwithstanding any provisions of law specifying a lesser sentence:

(1) For a person not previously convicted of a felony but armed with a deadly weapon at the time of the commission of his offense, the duration of confinement shall not be fixed at less than five years.

(2) For a person previously convicted of a felony either in this state or elsewhere and who was armed with a deadly weapon at the time of the commission of his offense, the duration of confinement shall not be fixed at less than seven and one-half years.

The words "deadly weapon," as used in this section include, but are not limited to, any instrument known as a blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

(3) For a person convicted of being a habitual criminal within the meaning of the statute which provides for mandatory life imprisonment for such habitual criminals, the duration of confinement shall not be fixed at less than fifteen years. The board shall retain jurisdiction over such convicted person throughout his natural life unless the governor by appropriate executive action orders otherwise.

(4) Any person convicted of embezzling funds from any institution of public deposit of which he was an officer or stockholder, the duration of confinement shall be fixed at not less than five years.

Except when an inmate of the reformatory, penitentiary, or such other penal institution as may hereafter be established has been convicted of murder in the first or second degree, the board may parole an inmate prior to the expiration of a mandatory minimum term, provided such inmate has demonstrated a meritorious effort in rehabilitation and at least two-thirds of the board members concur in such action: *Provided*, That any inmate who has a mandatory minimum term and is paroled

prior to the expiration of such term according to the provisions of this chapter shall not receive a conditional release from supervision while on parole until after the mandatory minimum term has expired. [1986 c 224 § 9; 1975-'76 2nd ex.s. c 63 § 2; 1961 c 138 § 2; 1955 c 133 § 5. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

Legislative finding—Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.052 Redetermination and refixing of minimum term of confinement. At any time after the board (or the court after July 1, 1986) has determined the minimum term of confinement of any person subject to confinement in a state correctional institution, the board may request the superintendent of such correctional institution to conduct a full review of such person's prospects for rehabilitation and report to the board the facts of such review and the resulting findings. Upon the basis of such report and such other information and investigation that the board deems appropriate, the board may redetermine and refix such convicted person's minimum term of confinement whether the term was set by the board or the court.

The board shall not reduce a person's minimum term of confinement unless the board has received from the department of corrections all institutional conduct reports relating to the person. [1986 c 224 § 10; 1983 c 196 § 1; 1972 ex.s. c 67 § 1.]

Legislative finding—Effective date—Severability—1986 c 224: See notes following RCW 9.95.001.

9.95.055 Reduction of sentences during war emergency. The board of prison terms and paroles is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate confined in the Washington state penitentiary or reformatory, who will be accepted by and inducted into the armed services: *Provided*, That a reduction downward shall not be made under this section for those inmates who are confined for treason, murder in the first degree or carnal knowledge of a female child under ten years: *And provided further*, That no such inmate shall be released under this section who is found to be a sexual psychopath under the provisions of and as defined by chapter 71.12 RCW. [1951 c 239 § 1.]

9.95.060 When sentence begins to run. When a convicted person appeals from his conviction and is at liberty on bond pending the determination of the appeal by the supreme court or the court of appeals, credit on his sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified to the department of corrections, the Washington state board of prison terms and paroles, and the prosecuting attorney of the county in which such convicted person was convicted and sentenced, by the sheriff of such county. If such convicted person does not appeal from his conviction, but is at liberty for a period

of time subsequent to the signing of the judgment and sentence, or becomes a fugitive, credit on his sentence will begin from the date such convicted person is returned to custody. The date of return to custody shall be certified as provided in this section. In all other cases, credit on a sentence will begin from the date the judgment and sentence is signed by the court. [1981 c 136 § 36; 1979 c 141 § 1; 1971 c 81 § 46; 1967 c 200 § 10; 1955 c 133 § 7. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. § 10249-2, part.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.062 Appeal stays execution—Credit for time in jail pending appeal. An appeal by a defendant in a criminal action shall stay the execution of the judgment of conviction.

In case the defendant has been convicted of a felony, and has been unable to furnish a bail bond pending the appeal, the time he has been imprisoned pending the appeal shall be deducted from the term for which he was theretofore sentenced to the penitentiary, if the judgment against him be affirmed. [1969 ex.s. c 4 § 1; 1969 c 103 § 1; 1955 c 42 § 2. Prior: 1893 c 61 § 30; RRS § 1745. Formerly RCW 10.73.030, part.]

9.95.063 Conviction upon new trial—Former imprisonment deductible. If a defendant who has been imprisoned during the pendency of any post-trial proceeding in any state or federal court shall be again convicted upon a new trial resulting from any such proceeding, the period of his former imprisonment shall be deducted by the superior court from the period of imprisonment to be fixed on the last verdict of conviction. [1971 ex.s. c 86 § 1; 1971 c 81 § 47; 1955 c 42 § 4. Prior: 1893 c 61 § 34; RRS § 1750. Formerly RCW 10.73.070, part.]

9.95.070 Time credit reductions for good behavior. Every prisoner who has a favorable record of conduct at the penitentiary or the reformatory, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him to the satisfaction of the superintendent of the penitentiary or reformatory, and in whose behalf the superintendent of the penitentiary or reformatory files a report certifying that his conduct and work have been meritorious and recommending allowance of time credits to him, shall upon, but not until, the adoption of such recommendation by the board of prison terms and paroles, be allowed time credit reductions from the term of imprisonment fixed by the board of prison terms and paroles. [1955 c 133 § 8. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.080 Revocation and redetermination of minimum for infractions. In case any convicted person undergoing sentence in the penitentiary, reformatory, or other state correctional institution, commits any infractions of the rules and regulations of the institution, the board of prison terms and paroles may revoke any order theretofore made determining the length of time such convicted

person shall be imprisoned, including the forfeiture of all or a portion of credits earned or to be earned, pursuant to the provisions of RCW 9.95.110, and make a new order determining the length of time he shall serve, not exceeding the maximum penalty provided by law for the crime for which he was convicted, or the maximum fixed by the court. Such revocation and redetermination shall not be had except upon a hearing before the board of prison terms and paroles. At such hearing the convicted person shall be present and entitled to be heard and may present evidence and witnesses in his behalf. [1972 ex.s. c 68 § 1; 1961 c 106 § 1; 1955 c 133 § 9. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.090 Labor may be required under rules and regulations. The board of prison terms and paroles shall require of every able bodied convicted person imprisoned in the penitentiary or the reformatory as many hours of faithful labor in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the institution in which he is confined. [1955 c 133 § 10. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. § 10249-2, part.]

Labor by prisoners: Chapter 72.64 RCW.

9.95.100 Prisoner released on serving maximum term. Any convicted person undergoing sentence in the penitentiary or the reformatory, not sooner released under the provisions of this chapter, shall, in accordance with the provisions of law, be discharged from custody on serving the maximum punishment provided by law for the offense of which such person was convicted, or the maximum term fixed by the court where the law does not provide for a maximum term. The board shall not, however, until his maximum term expires, release a prisoner, unless in its opinion his rehabilitation has been complete and he is a fit subject for release. [1955 c 133 § 11. Prior: (i) 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part. (ii) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.110 Parole of prisoners. The board of prison terms and paroles may permit a convicted person to leave the buildings and enclosures of the penitentiary or the reformatory on parole, after such convicted person has served the period of confinement fixed for him by the board, less time credits for good behavior and diligence in work: *Provided*, That in no case shall an inmate be credited with more than one-third of his sentence as fixed by the board.

The board of prison terms and paroles may establish rules and regulations under which a convicted person may be allowed to leave the confines of the penitentiary or the reformatory on parole, and may return such person to the confines of the institution from which he was paroled, at its discretion. [1955 c 133 § 12. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.115 Parole of life term prisoners. The board of prison terms and paroles is hereby granted authority to parole any person sentenced to the penitentiary or the reformatory, under a mandatory life sentence, who has been continuously confined therein for a period of twenty consecutive years less earned good time: *Provided*, The superintendent of the penitentiary or the reformatory, as the case may be, certifies to the board of prison terms and paroles that such person's conduct and work have been meritorious, and based thereon, recommends parole for such person: *Provided*, That no such person shall be released under parole who is found to be a sexual psychopath under the provisions of and as defined by chapter 71.12 RCW. [1951 c 238 § 1.]

9.95.117 Parolees subject to supervision of division of probation and parole—Progress reports. See RCW 72.04A.080.

9.95.119 Plans and recommendations for conditions of supervision of parolees. See RCW 72.04A.070.

9.95.120 Suspension, revision of parole—Powers and duties of probation officers—Hearing—Retaking of parole violator—Reinstatement. Whenever the board of prison terms and paroles or a probation and parole officer of this state has reason to believe a convicted person has breached a condition of his parole or violated the law of any state where he may then be or the rules and regulations of the board of prison terms and paroles, any probation and parole officer of this state may arrest or cause the arrest and detention and suspension of parole of such convicted person pending a determination by the board whether the parole of such convicted person shall be revoked. All facts and circumstances surrounding the violation by such convicted person shall be reported to the board of prison terms and paroles by the probation and parole officer, with recommendations. The board of prison terms and paroles, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board to perform its functions under this section. On the basis of the report by the probation and parole officer, or at any time upon its own discretion, the board may revise or modify the conditions of parole or order the suspension of parole by the issuance of a written order bearing its seal which order shall be sufficient warrant for all peace officers to take into custody any convicted person who may be on parole and retain such person in their custody until arrangements can be made by the board of prison terms and paroles for his return to a state correctional institution for convicted felons. Any such revision or modification of the conditions of parole or the order suspending parole shall be personally served upon the parolee.

Any parolee arrested and detained in physical custody by the authority of a state probation and parole officer,

or upon the written order of the board of prison terms and paroles, shall not be released from custody on bail or personal recognizance, except upon approval of the board of prison terms and paroles and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole.

All chiefs of police, marshals of cities and towns, sheriffs of counties, and all police, prison, and peace officers and constables shall execute any such order in the same manner as any ordinary criminal process.

Whenever a paroled prisoner is accused of a violation of his parole, other than the commission of, and conviction for, a felony or misdemeanor under the laws of this state or the laws of any state where he may then be, he shall be entitled to a fair and impartial hearing of such charges within thirty days from the time that he is served with charges of the violation of conditions of his parole after his arrest and detention. The hearing shall be held before one or more members of the parole board at a place or places, within this state, reasonably near the site of the alleged violation or violations of parole.

In the event that the board of prison terms and paroles suspends a parole by reason of an alleged parole violation or in the event that a parole is suspended pending the disposition of a new criminal charge, the board of prison terms and paroles shall have the power to nullify the order of suspension and reinstate the individual to parole under previous conditions or any new conditions that the board of prison terms and paroles may determine advisable. Before the board of prison terms and paroles shall nullify an order of suspension and reinstate a parole they shall have determined that the best interests of society and the individual shall best be served by such reinstatement rather than a return to a penal institution. [1981 c 136 § 37; 1979 c 141 § 2; 1969 c 98 § 2; 1961 c 106 § 2; 1955 c 133 § 13. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1969 c 98: "If any provision of this act, or its application to any person or circumstance is invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 98 § 10.]

Effective date—1969 c 98: "This act shall take effect on July 1, 1969." [1969 c 98 § 11.]

Violations of parole or probation—*Revision of parole conditions*—*Rearrest*—*Detention*: RCW 72.04A.090.

9.95.121 On-site parole revocation hearing—Procedure when waived. Within fifteen days from the date of notice to the department of corrections of the arrest and detention of the alleged parole violator, he shall be personally served by a state probation and parole officer with a copy of the factual allegations of the violation of the conditions of parole, and, at the same time shall be advised of his right to an on-site parole revocation hearing and of his rights and privileges as provided in RCW 9.95.120 through 9.95.126. The alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights may waive the on-site parole revocation hearing as provided in RCW 9.95.120, and admit one or more of the alleged violations

of the conditions of parole. If the board accepts the waiver it shall either, (1) reinstate the parolee on parole under the same or modified conditions, or (2) revoke the parole of the parolee and enter an order of parole revocation and return to state custody. A determination of a new minimum sentence shall be made within thirty days of return to state custody which shall not exceed the maximum sentence as provided by law for the crime of which the parolee was originally convicted or the maximum fixed by the court.

If the waiver made by the parolee is rejected by the board it shall hold an on-site parole revocation hearing under the provisions of RCW 9.95.120 through 9.95.126. [1981 c 136 § 38; 1979 c 141 § 3; 1969 c 98 § 3.]

Reviser's note: The term "this 1969 amendatory act" has been changed to RCW 9.95.120 through 9.95.126. Technically the term also includes RCW 9.95.003 and 72.04A.090 and the effective date and severability sections footnoted after RCW 9.95.120.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—**Effective date**—1969 c 98: See notes following RCW 9.95.120.

9.95.122 On-site parole revocation hearing—Representation for alleged parole violators—Compensation. At any on-site parole revocation hearing the alleged parole violator shall be entitled to be represented by an attorney of his own choosing and at his own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: *Provided*, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the board of prison terms and paroles. [1969 c 98 § 4.]

Severability—**Effective date**—1969 c 98: See notes following RCW 9.95.120.

9.95.123 On-site parole revocation hearing—Conduct—Witnesses—Subpoenas, enforcement. In conducting on-site parole revocation hearings, the board of prison terms and paroles shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW as now or hereafter

amended. If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the board of prison terms and paroles may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: *Provided*, That an offer to pay statutory fees and mileage has been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order, the witness shall be dealt with as for contempt of court. [1969 c 98 § 5.]

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.124 On-site parole revocation hearing—Attorney general's recommendations—Rules governing procedure. At all on-site parole revocation hearings the probation and parole officers of the department of corrections, having made the allegations of the violations of the conditions of parole, may be represented by the attorney general. The attorney general may make independent recommendations to the board about whether the violations constitute sufficient cause for the revocation of the parole and the return of the parolee to a state correctional institution for convicted felons. The hearings shall be open to the public unless the board for specifically stated reasons closes the hearing in whole or in part. The hearings shall be recorded either manually or by a mechanical recording device. An alleged parole violator may be requested to testify and any such testimony shall not be used against him in any criminal prosecution. The board of prison terms and paroles shall adopt rules governing the formal and informal procedures authorized by this chapter and make rules of practice before the board in on-site parole revocation hearings, together with forms and instructions. [1983 c 196 § 2; 1981 c 136 § 39; 1979 c 141 § 4; 1969 c 98 § 6.]

Effective date—1981 c 136: See RCW 72.09.900.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.125 On-site parole revocation hearing—Board's decision—Reinstatement or revocation of parole. After the on-site parole revocation hearing has

been concluded, the members of the board having heard the matter shall enter their decision of record within ten days, and make findings and conclusions upon the allegations of the violations of the conditions of parole. If the member, or members having heard the matter, should conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of the evidence, or, those which have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee shall be reinstated on parole on the same or modified conditions of parole. If the member or members having heard the matter should conclude that the allegations of violation of the conditions of parole have been proven by a preponderance of the evidence and constitute sufficient cause for the revocation of parole, then such member or members shall enter an order of parole revocation and return the parole violator to state custody. Within thirty days of the return of such parole violator to a state correctional institution for convicted felons the board of prison terms and paroles shall enter an order determining a new minimum sentence, not exceeding the maximum penalty provided by law for the crime for which the parole violator was originally convicted or the maximum fixed by the court. [1969 c 98 § 7.]

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.126 On-site parole revocation hearing—Cooperation in providing facilities for hearings. All officers and employees of the state, counties, cities and political subdivisions of this state shall cooperate with the board of prison terms and paroles in making available suitable facilities for conducting parole revocation hearings. [1969 c 98 § 8.]

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

9.95.130 When parole revoked prisoner deemed escapee until return to custody. From and after the suspension, cancellation, or revocation of the parole of any convicted person and until his return to custody he shall be deemed an escapee and a fugitive from justice and no part of the time during which he is an escapee and fugitive from justice shall be a part of his term. [1955 c 133 § 14. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.140 Record of parolees—Cooperation by officials and employees. The board of prison terms and paroles shall cause a complete record to be kept of every prisoner released on parole. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. The board may make rules as to the privacy of such records and their use by others than the board and its staff.

The superintendent of the penitentiary and the reformatory and all officers and employees thereof and all other public officials shall at all times cooperate with the

board and furnish to the board, its officers, and employees such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the board, its officers, and employees free access to all prisoners confined in the penal institutions of the state. [1955 c 133 § 15. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Washington state patrol, identification, child abuse, and criminal history section: RCW 43.43.700 through 43.43.765.

9.95.150 Rules and regulations. The board of prison terms and paroles shall make all necessary rules and regulations to carry out the provisions of this chapter not inconsistent therewith, and may provide the forms of all documents necessary therefor. [1955 c 133 § 16. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.160 Governor's powers not affected—Revocation of paroles granted by board. This chapter shall not limit or circumscribe the powers of the governor to commute the sentence of, or grant a pardon to, any convicted person, and the governor may cancel or revoke the parole granted to any convicted person by the board of prison terms and paroles. The written order of the governor canceling or revoking such parole shall have the same force and effect and be executed in like manner as an order of the board of prison terms and paroles. [1955 c 133 § 17. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

9.95.170 Board to inform itself as to each convict—Department of corrections to make records available to board. To assist it in fixing the duration of a convicted person's term of confinement, and in fixing the condition for release from custody on parole, it shall not only be the duty of the board of prison terms and paroles to thoroughly inform itself as to the facts of such convicted person's crime but also to inform itself as thoroughly as possible as to such convict as a personality. The department of corrections and the institutions under its control shall make available to the board of prison terms and paroles on request its case investigations, any file or other record, in order to assist the board in developing information for carrying out the purpose of this section. [1981 c 136 § 40; 1979 c 141 § 5; 1967 c 134 § 13; 1935 c 114 § 3; RRS § 10249-3.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.190 Application of RCW 9.95.010 through 9.95.170 to inmates previously committed. The provisions of RCW 9.95.010 through 9.95.170, inclusive, as enacted by chapter 114, Laws of 1935, insofar as applicable, shall apply to all convicted persons serving time in the state penitentiary or reformatory on June 12, 1935, to the end that at all times the same provisions relating to sentences, imprisonments, and paroles of prisoners shall apply to all inmates thereof.

Similarly the provisions of said sections, as amended by chapter 92, Laws of 1947, insofar as applicable, shall

apply to all convicted persons serving time in the state penitentiary or reformatory on June 11, 1947, to the end that at all times the same provisions relating to sentences, imprisonments, and paroles of prisoners shall apply to all inmates thereof. [1983 c 3 § 10; 1955 c 133 § 18. Prior: (i) 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part. (ii) 1947 c 92 § 2, part; Rem. Supp. 1947 § 10249-2a, part.]

9.95.195 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected. See RCW 9.96.050.

9.95.200 Probation by court—Investigation by secretary of corrections. After conviction by plea or verdict of guilty of any crime, the court upon application or its own motion, may summarily grant or deny probation, or at a subsequent time fixed may hear and determine, in the presence of the defendant, the matter of probation of the defendant, and the conditions of such probation, if granted. The court may, in its discretion, prior to the hearing on the granting of probation, refer the matter to the secretary of corrections or such officers as the secretary may designate for investigation and report to the court at a specified time, upon the circumstances surrounding the crime and concerning the defendant, his prior record, and his family surroundings and environment. [1981 c 136 § 41; 1979 c 141 § 6; 1967 c 134 § 15; 1957 c 227 § 3. Prior: 1949 c 59 § 1; 1939 c 125 § 1, part; 1935 c 114 § 5; Rem. Supp. 1949 § 10249-5a.]

Rules of court: ER 410.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1939 c 125: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this act as a whole, or of any section, provision or part thereof not adjudged invalid or unconstitutional." [1939 c 125 § 3 p 356.]

Suspending sentences: RCW 9.92.060.

9.95.210 Conditions may be imposed on probation. In granting probation, the court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

In the order granting probation and as a condition thereof, the court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the court shall require the payment of the penalty assessment required by RCW 7.68.035. The court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser

offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required, and (4) to contribute to a county or interlocal drug fund, and may require bonds for the faithful observance of any and all conditions imposed in the probation. The court shall order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow implicitly the instructions of the secretary. If the probationer has been ordered to make restitution, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located. [1987 c 202 § 146; 1984 c 46 § 1; 1983 c 156 § 4; 1982 1st ex.s. c 47 § 10; 1982 1st ex.s. c 8 § 5; 1981 c 136 § 42; 1980 c 19 § 1. Prior: 1979 c 141 § 7; 1979 c 29 § 2; 1969 c 29 § 1; 1967 c 200 § 8; 1967 c 134 § 16; 1957 c 227 § 4; prior: 1949 c 77 § 1; 1939 c 125 § 1, part; Rem. Supp. 1949 § 10249-5b.]

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

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

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1939 c 125: See note following RCW 9.95.200.

Restitution

alternative to fine: RCW 9A.20.030.

condition to suspending sentence: RCW 9.92.060.

disposition when victim not found or dead: RCW 7.68.290.

Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.

Violations of probation conditions, rearrest, detention: RCW 72.04A.090.

9.95.215 Counties may provide probation and parole services. See RCW 36.01.070.

9.95.220 Violation of probation—Rearrest—Imprisonment. Whenever the state parole officer or other officer under whose supervision the probationer has been placed shall have reason to believe such probationer is violating the terms of his probation, or engaging in criminal practices, or is abandoned to improper associates, or living a vicious life, he shall cause the probationer to be brought before the court wherein the probation was granted. For this purpose any peace officer or state parole officer may rearrest any such person

without warrant or other process. The court may thereupon in its discretion without notice revoke and terminate such probation. In the event the judgment has been pronounced by the court and the execution thereof suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory as the case may be. If the judgment has not been pronounced, the court shall pronounce judgment after such revocation of probation and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory, in accordance with the sentence imposed. [1957 c 227 § 5. Prior: 1939 c 125 § 1, part; RRS § 10249-5c.]

Severability—1939 c 125: See note following RCW 9.95.200.

9.95.230 Court revocation or termination of probation. The court shall have authority at any time prior to the entry of an order terminating probation to (1) revoke, modify, or change its order of suspension of imposition or execution of sentence; (2) it may at any time, when the ends of justice will be subserved thereby, and when the reformation of the probationer shall warrant it, terminate the period of probation, and discharge the person so held. [1982 1st ex.s. c 47 § 11; 1957 c 227 § 6. Prior: 1939 c 125 § 1, part; RRS § 10249-5d.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Severability—1939 c 125: See note following RCW 9.95.200.

9.95.240 Dismissal of information or indictment after probation completed. Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he has been convicted be permitted in the discretion of the court to withdraw his plea of guilty and enter a plea of not guilty, or if he has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. The probationer shall be informed of this right in his probation papers: *Provided*, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed. [1957 c 227 § 7. Prior: 1939 c 125 § 1, part; RRS § 10249-5e.]

Severability—1939 c 125: See note following RCW 9.95.200.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

9.95.250 Probation and parole officers. In order to carry out the provisions of this chapter 9.95 RCW the parole officers working under the supervision of the secretary of corrections shall be known as probation and parole officers. [1981 c 136 § 43; 1979 c 141 § 8; 1967 c 134 § 17; 1957 c 227 § 8. Prior: 1939 c 125 § 1, part; RRS § 10249–5f.]

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1939 c 125: See note following RCW 9.95.200.
Juvenile courts, probation officers: RCW 13.04.040, 13.04.050.

9.95.260 Board to pass on representations made in applications for pardons and restoration of civil rights—Department of corrections to assist board—Supervise conditionally pardoned persons. It shall be the duty of the board of prison terms and paroles, when requested by the governor, to pass on the representations made in support of applications for pardons for convicted persons and to make recommendations thereon to the governor.

It will be the duty of the secretary of corrections to exercise supervision over such convicted persons as have been conditionally pardoned by the governor, to the end that such persons shall faithfully comply with the conditions of such pardons. The board of prison terms and paroles shall also pass on any representations made in support of applications for restoration of civil rights of convicted persons, and make recommendations to the governor. The department of corrections shall prepare materials and make investigations requested by the board of prison terms and paroles in order to assist the board in passing on the representations made in support of applications for pardon or for the restoration of civil rights. [1981 c 136 § 44; 1979 c 141 § 9; 1967 c 134 § 14; 1935 c 114 § 7; RRS § 10249–7.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.265 Report to governor and legislature. The board of prison terms and paroles shall transmit to the governor and to the legislature, as often as the governor may require it, a report of its work, in which shall be given such information as may be relevant. [1977 c 75 § 5; 1955 c 340 § 11. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249–8, part. Formerly RCW 43.67.040.]

9.95.267 Transfer of certain powers and duties of board to division of probation and parole. See RCW 72.04A.050.

9.95.270 Compacts for out-of-state supervision of parolees or probationers—Uniform act. The governor of this state is hereby authorized to execute a compact on behalf of the state of Washington with any of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the congress of the United States of America, granted by an act entitled "An Act granting the consent of congress to any two or more states to enter into agreements or compacts

for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state, party to this compact, (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, (herein called "receiving state"), while on probation or parole, if

(a) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: *Provided, however,* That if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and

any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states, party hereto. [1937 c 92 § 1; RRS § 10249-11.]

Severability—1937 c 92: "If any section, sentence, subdivision or clause of this act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act." [1937 c 92 § 2 p 382.] This applies to RCW 9.95.270.

Short title—1937 c 92: "This act may be cited as the Uniform Act for Out-of-State Supervision." [1937 c 92 § 3 p 382.] This applies to RCW 9.95.270.

Interstate

*compact on juveniles: Chapter 13.24 RCW.
parole and probation hearing procedures: Chapter 9.95B RCW.*

9.95.280 Return of parole violators from without state—Deputizing out-of-state officers. The board of prison terms and paroles is hereby authorized and empowered to deputize any person (regularly employed by another state) to act as an officer and agent of this state in effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state. In any matter relating to the return of such a person, any agent so deputized shall have all the powers of a police officer of this state. [1955 c 183 § 1.]

9.95.290 Return of parole violators from without state—Deputization procedure. Any deputization pursuant to this statute shall be in writing and any person authorized to act as an agent of this state pursuant hereto shall carry formal evidence of his deputization and shall produce the same upon demand. [1955 c 183 § 2.]

9.95.300 Return of parole violators from without state—Contracts to share costs. The board of prison terms and paroles is hereby authorized to enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state. [1955 c 183 § 3.]

9.95.310 Assistance for parolees, work release, and discharged prisoners—Declaration of purpose. The purpose of RCW 9.95.310 through 9.95.370 is to provide necessary assistance, other than assistance which is authorized to be provided under the vocational rehabilitation laws, Title 28A RCW, under the public assistance laws, Title 74 RCW or the department of employment

security or other state agency, for parolees, inmates assigned to work/training release facilities, discharged prisoners and persons convicted of a felony and granted probation in need and whose capacity to earn a living under these circumstances is impaired; and to help such persons attain self-care and/or self-support for rehabilitation and restoration to independence as useful citizens as rapidly as possible thereby reducing the number of returnees to the institutions of this state to the benefit of such person and society as a whole. [1986 c 125 § 1; 1971 ex.s. c 31 § 1; 1961 c 217 § 2.]

9.95.320 Assistance for parolees, work release, and discharged prisoners—Secretary or designee may provide subsistence—Terms and conditions. The secretary of corrections or his or her designee may provide to any parolee, inmate assigned to a work/training release facility, discharged prisoner and persons convicted of a felony and granted probation in need and without necessary means, from any funds legally available therefor, such reasonable sums as he deems necessary for the subsistence of such person and his family until such person has become gainfully employed. Such aid may be made under such terms and conditions, and through local parole or probation officers if necessary, as the secretary of corrections or his designee may require and shall be supplementary to any moneys which may be provided under public assistance or from any other source. [1986 c 125 § 2; 1981 c 136 § 45; 1971 ex.s. c 31 § 2; 1961 c 217 § 3.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.330 Assistance for parolees, work release, and discharged prisoners—Department may accept gifts and make expenditures. The department of corrections may accept any devise, bequest, gift, grant, or contribution made for the purposes of RCW 9.95.310 through 9.95.370 and the secretary of corrections or his designee may make expenditures, or approve expenditures by local parole or probation officers, therefrom for the purposes of RCW 9.95.310 through 9.95.370 in accordance with the rules of the department of corrections. [1981 c 136 § 46; 1971 ex.s. c 31 § 3; 1961 c 217 § 4.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.340 Assistance for parolees, work release, and discharged prisoners—Use of funds belonging to absconders, repayment by benefited prisoner or parolee—Repayment of funds to prisoners and parolees. Any funds in the hands of the department of corrections, or which may come into its hands, which belong to discharged prisoners, inmates assigned to work/training release facilities, parolees or persons convicted of a felony and granted probation who absconded, or whose whereabouts are unknown, shall be deposited in the community services revolving fund. Said funds shall be used to defray the expenses of clothing and other necessities and for transporting discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation who are

without means to secure the same. All payments disbursed from these funds shall be repaid, whenever possible, by discharged prisoners, inmates assigned to work/training release facilities, parolees and persons convicted of a felony and granted probation for whose benefit they are made. Whenever any money belonging to such persons is so paid into the revolving fund, it shall be repaid to them in accordance with law if a claim therefor is filed with the department of corrections within five years of deposit into said fund and upon a clear showing of a legal right of such claimant to such money. [1986 c 125 § 3; 1981 c 136 § 47; 1971 ex.s. c 31 § 4; 1961 c 217 § 5.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.350 Assistance for parolees, work release, and discharged prisoners—Accounting, use, disposition of funds or property which is for prisoner or parolee. All money or other property paid or delivered to a probation or parole officer or employee of the department of corrections by or for the benefit of any discharged prisoner, inmate assigned to a work/training release facility, parolee or persons convicted of a felony and granted probation shall be immediately transmitted to the department of corrections and it shall enter the same upon its books to his credit. Such money or other property shall be used only under the direction of the department of corrections.

If such person absconds, the money shall be deposited in the revolving fund created by RCW 9.95.360, and any other property, if not called for within one year, shall be sold by the department of corrections and the proceeds credited to the revolving fund.

If any person, files a claim within five years after the deposit or crediting of such funds, and satisfies the department of corrections that he is entitled thereto, the department may make a finding to that effect and may make payment to the claimant in the amount to which he is entitled. [1986 c 125 § 4; 1981 c 136 § 48; 1971 ex.s. c 31 § 5; 1961 c 217 § 6.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.360 Assistance for parolees, work release, and discharged prisoners—Community services revolving fund—Composition—Disbursements—Deposits—Security by depository. The department of corrections shall create, maintain, and administer outside the state treasury a permanent revolving fund to be known as the "community services revolving fund" into which shall be deposited all moneys received by it under RCW 9.95.310 through 9.95.370 and any appropriation made for the purposes of RCW 9.95.310 through 9.95.370. All expenditures from this revolving fund shall be made by check or voucher signed by the secretary of corrections or his designee. The community services revolving fund shall be deposited by the department of corrections in such banks or financial institutions as it may select which shall give to the department a surety bond executed by a surety company authorized to do business in this state, or collateral eligible as security for

deposit of state funds in at least the full amount of deposit. [1986 c 125 § 5; 1981 c 136 § 49; 1971 ex.s. c 31 § 6; 1961 c 217 § 7.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.370 Assistance for parolees and discharged prisoners—Agreement by recipient to repay funds. The secretary of corrections or his designee shall enter into a written agreement with every person receiving funds under RCW 9.95.310 through 9.95.370 that such person will repay such funds under the terms and conditions in said agreement. No person shall receive funds until such an agreement is validly made. [1981 c 136 § 50; 1971 ex.s. c 31 § 7; 1961 c 217 § 8.]

Effective date—1981 c 136: See RCW 72.09.900.

9.95.900 RCW 9.95.003 through 9.95.052, 9.95.070 through 9.95.265, 9.95.350, 9.95.360 inapplicable to felonies committed on or after July 1, 1984. The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.010, 9.95.015, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.040, 9.95.052, 9.95.070, 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121, 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140, 9.95.150, 9.95.160, 9.95.170, 9.95.190, 9.95.200, 9.95.210, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.350, and 9.95.360. [1981 c 137 § 32.]

Severability—1981 c 137: See RCW 9.94A.910.

Chapter 9.95B

INTERSTATE PAROLE AND PROBATION HEARING PROCEDURES

Sections

9.95B.010	Parole or probation violations—Hearing requirements—Purpose—Report to sending state—Custody.
9.95B.020	Qualifications of hearing officers.
9.95B.030	Hearing—Notice, content—Procedure.
9.95B.040	Hearings by other states—Effect on this state.
9.95B.900	Effective date—1973 c 21.

Interstate compact for out-of-state supervision of parolees or probationers: RCW 9.95.270.

9.95B.010 Parole or probation violations—Hearing requirements—Purpose—Report to sending state—Custody. Where supervision of a parolee or probationer is being administered by this state pursuant to RCW 9.95.270, the interstate compact for the out-of-state supervision of parolees and probationers, the appropriate interstate compact administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing at or near the site of the alleged violation shall be held in accordance with this chapter within a reasonable time, unless such hearing is waived by the parolee or probationer. The purpose of

such hearing shall be to determine whether there is probable cause to believe that the parolee or probationer has committed a violation of a condition of parole or probation, and if so, whether or not there is reason to believe that the violation or violations are of such a nature that revocation of parole or probation should be considered. The appropriate officer or officers of this state shall, as soon as practicable following termination of any such hearing, report, through the interstate compact administrator's office, to the sending state, furnish a copy of the summary and digest of the hearing, and may, in addition, make recommendations, with reasons, regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed ten days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration. [1973 c 21 § 2.]

9.95B.020 Qualifications of hearing officers. Any hearing pursuant to this chapter may be before the administrator of the interstate compact for the out-of-state supervision of parolees and probationers, a deputy of such administrator, or any other person or persons authorized pursuant to the laws of this state to hold preliminary hearings or hear cases involving alleged parole or probation violation, except that no hearing officer shall be the person or direct supervisor of the person making the allegation of violation. [1973 c 21 § 3.]

9.95B.030 Hearing—Notice, content—Procedure. With respect to any hearing pursuant to this chapter, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation of a condition of parole or probation, and if so, whether or not there is reason to believe that the violation or violations are of such a nature that revocation of parole or probation should be considered.

(2) Shall be permitted to consult with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations or given evidence against him, unless the hearing officer determines, on a reasonable basis, that such confrontation would present a substantial present or subsequent danger of harm to such person or persons in which case a written general summary of the evidence, without disclosure of the identity of the witness, shall be provided to the parolee or probationer who shall have the opportunity to present evidence relevant to or controverting any information contained in the summary.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other

evidence, in support of his contentions. A record of the proceedings shall be made, and preserved for no less than ninety days. [1973 c 21 § 4.]

9.95B.040 Hearings by other states—Effect on this state. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the out-of-state supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation, which hearing shall be substantially similar to the hearing required by RCW 9.95B.030. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this chapter, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers of this state. Should any recommendations be contained in or accompany the record, such recommendations shall be considered by the appropriate officer or officers of this state in making disposition of the matter. [1973 c 21 § 5.]

9.95B.900 Effective date—1973 c 21. This act shall take effect on July 1, 1973. [1973 c 21 § 6.]

Chapter 9.96

RESTORATION OF CIVIL RIGHTS

Sections

9.96.010	Restoration of civil rights.
9.96.020	Form of certificate.
9.96.030	Certified copy—Recording and indexing.
9.96.040	Copy of instrument restoring civil rights as evidence.
9.96.050	Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.

Governor

pardoning power: State Constitution Art. 3 § 9.
records to be kept: RCW 43.06.020.

remission of fines and forfeitures: State Constitution Art. 3 § 11.

Report of board of prison terms and paroles: RCW 9.95.260.

Restoration of employment rights: Chapter 9.96A RCW.

Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.

9.96.010 Restoration of civil rights. Whenever the governor shall grant a pardon to a person convicted of an infamous crime, or whenever the maximum term of imprisonment for which any such person was committed is about to expire or has expired, and such person has not otherwise had his civil rights restored, the governor shall have the power, in his discretion, to restore to such person his civil rights in the manner as in this chapter provided. [1961 c 187 § 2; 1931 c 19 § 1; 1929 c 26 § 2; RRS § 10250.]

9.96.020 Form of certificate. Whenever the governor shall determine to restore his civil rights to any person convicted of an infamous crime in any superior court of this state, he shall execute and file in the office of the

secretary of state an instrument in writing in substantially the following form:

"To the People of the State of Washington
 Greeting:
 I, the undersigned Governor of the State of Washington, by virtue of the power vested in my office by the constitution and laws of the State of Washington, do by these presents restore to ----- his civil rights forfeited by him (or her) by reason of his (or her) conviction of the crime of ----- (naming it) in the Superior Court for the County of -----, on to-wit: The ----- day of -----, 19....
 Dated the ----- day of -----, 19....
 (Signed) -----
 Governor of Washington."

[1931 c 19 § 2; 1929 c 26 § 3; RRS § 10251.]

9.96.030 Certified copy—Recording and indexing. Upon the filing of an instrument restoring civil rights in his office, it shall be the duty of the secretary of state to transmit a duly certified copy thereof to the clerk of the superior court named therein, who shall record the same in the journal of the court and index the same in the execution docket of the cause in which the conviction was had. [1931 c 19 § 3; 1929 c 26 § 4; RRS § 10252.]

9.96.040 Copy of instrument restoring civil rights as evidence. See RCW 5.44.090.

9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected. When a prisoner on parole has performed the obligations of his release for such time as shall satisfy the board of prison terms and paroles that his final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the prisoner. The board retains the jurisdiction to issue a certificate of discharge after the expiration of the prisoner's or parolee's maximum statutory sentence: *Provided*, That no such order of discharge shall be made in any case within a period of less than one year from the date on which the board has conditionally discharged the parolee from active supervision by a probation and parole officer, except where the parolee's maximum statutory sentence expires earlier. Such discharge, regardless of when issued, shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certification of discharge shall so state.

The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person. [1980 c 75 § 1; 1961 c 187 § 1.]

(1987 Ed.)

Chapter 9.96A

RESTORATION OF EMPLOYMENT RIGHTS

Sections
 9.96A.010 Legislative declaration.
 9.96A.020 Public employment—Licenses, permits, certificates, or registrations issued by state and political subdivisions—Disqualification due to prior felony conviction removed—Exceptions.
 9.96A.030 Chapter not applicable to law enforcement agencies.
 9.96A.040 Violations—Adjudication pursuant to administrative procedure act.
 9.96A.050 Provisions of chapter prevailing.
 9.96A.900 Effective date—1973 c 135.

Gambling commission—Denial, suspension, or revocation of license, permit—Other provisions not applicable: RCW 9.46.075.

Restoration of civil rights: Chapter 9.96 RCW.

State lottery commission—Denial, suspension, and revocation of licenses—Other provisions not applicable: RCW 67.70.090.

9.96A.010 Legislative declaration. The legislature declares that it is the policy of the state of Washington to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to rehabilitation and the assumption of the responsibilities of citizenship. [1973 c 135 § 1.]

9.96A.020 Public employment—Licenses, permits, certificates, or registrations issued by state and political subdivisions—Disqualification due to prior felony conviction removed—Exceptions. Notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the state of Washington or any of its agencies or political subdivisions, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its agencies or political subdivisions solely because of a prior conviction of a felony: *Provided*, This section shall not preclude the fact of any prior conviction of a crime from being considered. However, a person may be denied employment by the state of Washington or any of its agencies or political subdivisions, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years. [1973 c 135 § 2.]

9.96A.030 Chapter not applicable to law enforcement agencies. This chapter shall not be applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its

discretion from adopting the policy set forth in this chapter. [1973 c 135 § 3.]

9.96A.040 Violations—Adjudication pursuant to administrative procedure act. Any complaints or grievances concerning the violation of this chapter shall be processed and adjudicated in accordance with the procedures set forth in chapter 34.04 RCW, the administrative procedure act. [1973 c 135 § 4.]

9.96A.050 Provisions of chapter prevailing. The provisions of this chapter shall prevail over any other provisions of law which purport to govern the denial of licenses, permits, certificates, registrations, or other means to engage in a business, on the grounds of a lack of good moral character, or which purport to govern the suspension or revocation of such a license, permit, certificate, or registration on the grounds of conviction of a crime. [1973 c 135 § 5.]

9.96A.900 Effective date—1973 c 135. This act shall take effect on July 1, 1973. [1973 c 135 § 7.]

Chapter 9.98

PRISONERS—UNTRIED INDICTMENTS, INFORMATIONS, COMPLAINTS

Sections

9.98.010	Disposition of untried indictment, information, complaint—Procedure—Escape, effect.
9.98.020	Loss of jurisdiction and failure of indictment, information, complaint—Dismissal.
9.98.030	Chapter not applicable to mentally ill.
9.98.040	Court not prohibited from ordering prisoner to trial.

9.98.010 Disposition of untried indictment, information, complaint—Procedure—Escape, effect. (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information or complaint against the prisoner, he shall be brought to trial within one hundred twenty days after he shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information or complaint is pending written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: *Provided*, That for good cause shown in open court, the prisoner or his counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the board of prison terms and paroles relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the superintendent having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by registered mail, return receipt requested.

(3) The superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information or complaint against him concerning which the superintendent has knowledge and of his right to make a request for final disposition thereof.

(4) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request. [1959 c 56 § 1.]

9.98.020 Loss of jurisdiction and failure of indictment, information, complaint—Dismissal. In the event that the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice. [1959 c 56 § 2.]

9.98.030 Chapter not applicable to mentally ill. The provisions of this chapter shall not apply to any person adjudged to be mentally ill. [1959 c 56 § 3.]

9.98.040 Court not prohibited from ordering prisoner to trial. This chapter shall not be construed as preempting the right of the superior court on the motion of the county prosecuting attorney from ordering the superintendent of a state penal or correctional institution to cause a prisoner to be transported to the superior court of the county for trial upon any untried indictment, information or complaint. [1959 c 56 § 4.]

Chapter 9.100

AGREEMENT ON DETAINERS

Sections

9.100.010	Agreement on detainees—Text.
9.100.020	Appropriate court defined.
9.100.030	Courts, state and political subdivisions enjoined to enforce agreement.
9.100.040	Escape—Effect.
9.100.050	Giving over inmate authorized.
9.100.060	Administrator—Appointment.
9.100.070	Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights.
9.100.080	Copies of chapter—Transmission.

Untried indictments, informations, complaints—Disposition: Chapter 9.98 RCW.

9.100.010 Agreement on detainees—Text. The agreement on detainees is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

TEXT OF THE AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: *Provided*, That for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of correction or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of correction or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available

in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: *Provided*, That the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: *Provided further*, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal

prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(i) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(ii) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the

prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or effect [affect] any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1967 c 34 § 1.]

9.100.020 Appropriate court defined. The phrase "appropriate court" as used in the agreement on detainers shall, with reference to the courts of this state, mean any court with criminal jurisdiction. [1967 c 34 § 2.]

9.100.030 Courts, state and political subdivisions enjoined to enforce agreement. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes. [1967 c 34 § 3.]

9.100.040 Escape—Effect. Escape from custody while in another state pursuant to the agreement on detainers shall constitute an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provisions of the agreement on detainers and shall be punishable in the same manner as an escape from said institution. [1967 c 34 § 4.]

9.100.050 Giving over inmate authorized. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers. [1967 c 34 § 5.]

9.100.060 Administrator—Appointment. The governor is hereby authorized and empowered to designate and appoint a state officer to act as the administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article VII of the agreement on detainers. [1967 c 34 § 6.]

9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights. In order to implement Article IV(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty days, and to contest the legality of his delivery. [1967 c 34 § 7.]

9.100.080 Copies of chapter—Transmission. Copies of this chapter shall, upon its approval, be transmitted by the secretary of state to the governor of each state, to the attorney general and the secretary of state of the United States, and the council of state governments. [1967 c 34 § 8.]

Title 9A

WASHINGTON CRIMINAL CODE

(See also Crimes and Punishments, Title 9 RCW)

Chapters

- 9A.04 Preliminary article.
- 9A.08 Principles of liability.
- 9A.12 Insanity.
- 9A.16 Defenses.
- 9A.20 Classification of crimes.
- 9A.28 Anticipatory offenses.
- 9A.32 Homicide.
- 9A.36 Assault and other crimes involving physical harm.
- 9A.40 Kidnapping, unlawful imprisonment, and custodial interference.
- 9A.42 Criminal mistreatment.
- 9A.44 Sexual offenses.
- 9A.46 Harassment.
- 9A.48 Arson, reckless burning, and malicious mischief.
- 9A.52 Burglary and trespass.
- 9A.56 Theft and robbery.
- 9A.60 Fraud.
- 9A.64 Family offenses.
- 9A.68 Bribery and corrupt influence.
- 9A.72 Perjury and interference with official proceedings.
- 9A.76 Obstructing governmental operation.
- 9A.80 Abuse of office.
- 9A.82 Criminal profiteering act.
- 9A.84 Public disturbance.
- 9A.88 Indecent exposure—Prostitution.
- 9A.98 Laws repealed.

Crimes and punishments: Title 9 RCW.

Harassment: Chapter 10.14 RCW.

Chapter 9A.04 PRELIMINARY ARTICLE

Sections

- 9A.04.010 Title, effective date, application, severability, captions.
- 9A.04.020 Purposes—Principles of construction.
- 9A.04.030 State criminal jurisdiction.
- 9A.04.040 Classes of crimes.
- 9A.04.050 People capable of committing crimes—Capability of children.
- 9A.04.060 Common law to supplement statute.
- 9A.04.070 Who amenable to criminal statutes.
- 9A.04.080 Limitation of actions.
- 9A.04.090 Application of general provisions of the code.
- 9A.04.100 Proof beyond a reasonable doubt.
- 9A.04.110 Definitions.

9A.04.010 Title, effective date, application, severability, captions. (1) This title shall be known and may be cited as the Washington Criminal Code and shall become effective on July 1, 1976.

(2) The provisions of this title shall apply to any offense committed on or after July 1, 1976, which is defined in this title or the general statutes, unless otherwise expressly provided or unless the context otherwise requires, and shall also apply to any defense to prosecution for such an offense.

(3) The provisions of this title do not apply to or govern the construction of and punishment for any offense committed prior to July 1, 1976, or to the construction and application of any defense to a prosecution for such an offense. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this title had not been enacted.

(4) If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this title are declared to be severable.

(5) Chapter, section, and subsection captions are for organizational purposes only and shall not be construed as part of this title. [1975 1st ex.s. c 260 § 9A.04.010.]

Legislative direction for codification—1975 1st ex.s. c 260: "The provisions of this act shall constitute a new Title in the Revised Code of Washington to be designated as Title 9A RCW." [1975 1st ex.s. c 260 § 9A.92.900.]

9A.04.020 Purposes—Principles of construction.

(1) The general purposes of the provisions governing the definition of offenses are:

(a) To forbid and prevent conduct that inflicts or threatens substantial harm to individual or public interests;

(b) To safeguard conduct that is without culpability from condemnation as criminal;

(c) To give fair warning of the nature of the conduct declared to constitute an offense;

(d) To differentiate on reasonable grounds between serious and minor offenses, and to prescribe proportionate penalties for each.

(2) The provisions of this title shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this title. [1975 1st ex.s. c 260 § 9A.04.020.]

9A.04.030 State criminal jurisdiction. The following persons are liable to punishment:

(1) A person who commits in the state any crime, in whole or in part.

(2) A person who commits out of the state any act which, if committed within it, would be theft and is afterward found in the state with any of the stolen property.

(3) A person who being out of the state, counsels, causes, procures, aids, or abets another to commit a crime in this state.

(4) A person who, being out of the state, abducts or kidnaps by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends, or conveys such person into this state.

(5) A person who commits an act without the state which affects persons or property within the state, which, if committed within the state, would be a crime.

(6) A person who, being out of the state, makes a statement, declaration, verification, or certificate under RCW 9A.72.085 which, if made within the state, would be perjury. [1981 c 187 § 2; 1975 1st ex.s. c 260 § 9A.04.030.]

9A.04.040 Classes of crimes. (1) An offense defined by this title or by any other statute of this state, for which a sentence of imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, gross misdemeanors, or misdemeanors.

(2) A crime is a felony if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for a term in excess of one year. A crime is a misdemeanor if it is so designated in this title or by any other statute of this state or if persons convicted thereof may be sentenced to imprisonment for no more than ninety days. Every other crime is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.04.040.]

9A.04.050 People capable of committing crimes—Capability of children. Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians, whose opinion shall be competent evidence upon the question of his age. [1975 1st ex.s. c 260 § 9A.04.050.]

9A.04.060 Common law to supplement statute. The provisions of the common law relating to the commission of crime and the punishment thereof, insofar as not inconsistent with the Constitution and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the courts of this state having jurisdiction of the offense. [1975 1st ex.s. c 260 § 9A.04.060.]

9A.04.070 Who amenable to criminal statutes. Every person, regardless of whether or not he is an inhabitant

of this state, may be tried and punished under the laws of this state for an offense committed by him therein, except when such offense is cognizable exclusively in the courts of the United States. [1975 1st ex.s. c 260 § 9A.04.070.]

9A.04.080 Limitation of actions. Prosecutions for the offenses of murder, and arson where death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in a state correctional institution, committed by any public officer in connection with the duties of his office or constituting a breach of his public duty or a violation of his oath of office, and arson where death does not ensue, within ten years after their commission; for violations of RCW 9A.44.070, 9A.44.080, and 9A.44.100(1)(b), within seven years after their commission; for violations of RCW 9A.82.060 or 9A.82.080, within six years after their commission; for violations of class C felonies under chapter 74.09 RCW, within five years after their commission; for bigamy, within three years of the time specified in RCW 9A.64.010; for all other offenses the punishment of which may be imprisonment in a state correctional institution, within three years after their commission; two years for gross misdemeanors; and for all other offenses, within one year after their commission: *Provided*, That any length of time during which the party charged was not usually and publicly resident within this state shall not be reckoned within the one, two, three, five, six, seven, and ten years respectively: *And further provided*, That where an indictment has been found, or complaint or an information filed, within the time limited for the commencement of a criminal action, if the indictment, complaint or information be set aside, the time of limitation shall be extended by the length of time from the time of filing of such indictment, complaint, or information, to the time such indictment, complaint, or information was set aside. [1986 c 257 § 13; 1986 c 85 § 1. Prior: 1985 c 455 § 19; 1985 c 186 § 1; 1984 c 270 § 18; 1982 c 129 § 1; 1981 c 203 § 1; 1975 1st ex.s. c 260 § 9A.04.080.]

Reviser's note: This section was amended by 1986 c 85 § 1 and by 1986 c 257 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—Severability—1985 c 455: See RCW 9A.82.902 and 9A.82.904.

Severability—Effective date—1984 c 270: See RCW 9A.82.900 and 9A.82.901.

Severability—1982 c 129: "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." [1982 c 129 § 11.]

9A.04.090 Application of general provisions of the code. The provisions of chapters 9A.04 through 9A.28 RCW of this title are applicable to offenses defined by this title or another statute, unless this title or such other statute specifically provides otherwise. [1975 1st ex.s. c 260 § 9A.04.090.]

9A.04.100 Proof beyond a reasonable doubt. (1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest degree. [1975 1st ex.s. c 260 § 9A.04.100.]

9A.04.110 Definitions. (Effective until July 1, 1988.) 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 wilful 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 wilful 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) "Property" means anything of value, whether tangible or intangible, real or personal;

(22) "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;

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

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

(25) "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;

(26) "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;

(27) 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. [1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

Severability—1986 c 257: See note following RCW 9A.56.010.

9A.04.110 Definitions. (Effective July 1, 1988.) 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 substantial disfigurement, loss or impairment of the function of any bodily part or organ, a fracture of any bodily part, or substantial pain, whether such substantial bodily harm is temporary or permanent;

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

(22) "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;

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

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

(25) "Substantial pain" means serious physical pain extending for a period of time long enough to cause considerable suffering. The pain shall be the result of an actual injury capable of causing serious physical pain;

(26) "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;

(27) "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;

(28) 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. [1987 c 324 § 1; 1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

Effective date—1987 c 324: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1988." [1987 c 324 § 4.]

Effective date—1986 c 257 §§ 3-10: "Sections 3 through 10 of this act shall take effect on July 1, 1988." [1987 c 324 § 3; 1986 c 257 § 12.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Chapter 9A.08

PRINCIPLES OF LIABILITY

Sections

9A.08.010	General requirements of culpability.
9A.08.020	Liability for conduct of another—Complicity.
9A.08.030	Criminal liability of corporations and persons acting or under a duty to act in their behalf.

9A.08.010 General requirements of culpability. (1) Kinds of Culpability Defined.

(a) *Intent*. A person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.

(b) *Knowledge*. A person knows or acts knowingly or with knowledge when:

(i) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(c) *Recklessness*. A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.

(d) *Criminal negligence*. A person is criminally negligent or acts with criminal negligence when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.

(2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(3) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

(4) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears. [1975 1st ex.s. c 260 § 9A.08.010.]

9A.08.020 Liability for conduct of another—Complicity. (1) A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent or irresponsible person to engage in such conduct; or

(b) He is made accountable for the conduct of such other person by this title or by the law defining the crime; or

(c) He is an accomplice of such other person in the commission of the crime.

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he

(i) solicits, commands, encourages, or requests such other person to commit it; or

(ii) aids or agrees to aid such other person in planning or committing it; or

(b) His conduct is expressly declared by law to establish his complicity.

(4) A person who is legally incapable of committing a particular crime himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

(5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:

(a) He is a victim of that crime; or

(b) He terminates his complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

(6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted. [1975-'76 2nd ex.s. c 38 § 1; 1975 1st ex.s. c 260 § 9A.08.020.]

Effective date—1975-'76 2nd ex.s. c 38: "This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1976." [1975-'76 2nd ex.s. c 38 § 21.]

Severability—1975-'76 2nd ex.s. c 38: "If any provision of this 1976 amendatory 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." [1975-'76 2nd ex.s. c 38 § 20.]

9A.08.030 Criminal liability of corporations and persons acting or under a duty to act in their behalf. (1) As used in this section:

(a) "Agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation;

(b) "Corporation" includes a joint stock association;

(c) "High managerial agent" means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

(2) A corporation is guilty of an offense when:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and on behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.

(3) A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.

(4) Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.

(5) Every corporation, whether foreign or domestic, which shall violate any provision of RCW 9A.28.040, shall forfeit every right and franchise to do business in this state. The attorney general shall begin and conduct all actions and proceedings necessary to enforce the provisions of this subsection. [1975 1st ex.s. c 260 § 9A.08.030.]

Chapter 9A.12

INSANITY

Sections

9A.12.010 Insanity.

9A.12.010 Insanity. To establish the defense of insanity, it must be shown that:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He was unable to perceive the nature and quality of the act with which he is charged; or

(b) He was unable to tell right from wrong with reference to the particular act charged.

(2) The defense of insanity must be established by a preponderance of the evidence. [1975 1st ex.s. c 260 § 9A.12.010.]

**Chapter 9A.16
DEFENSES**

Sections

9A.16.010	Definitions.
9A.16.020	Use of force—When lawful.
9A.16.030	Homicide—When excusable.
9A.16.040	Justifiable homicide or use of deadly force by public officer, peace officer, person aiding.
9A.16.050	Homicide—By other person—When justifiable.
9A.16.060	Duress.
9A.16.070	Entrapment.
9A.16.080	Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
9A.16.090	Intoxication.
9A.16.100	Use of force on children—Policy—Actions presumed unreasonable.

9A.16.010 Definitions. In this chapter, unless a different meaning is plainly required:

(1) "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

(2) "Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. [1986 c 209 § 1; 1975 1st ex.s. c 260 § 9A.16.010.]

9A.16.020 Use of force—When lawful. The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;

(2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

(4) Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

(5) Whenever used by a carrier of passengers or the carrier's authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to the offender's personal safety;

(6) Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority for the restraint or custody of the person. [1986 c 149 § 2; 1979 ex.s. c 244 § 7; 1977 ex.s. c 80 § 13; 1975 1st ex.s. c 260 § 9A.16.020.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

9A.16.030 Homicide—When excusable. Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, without criminal negligence, or without any unlawful intent. [1979 ex.s. c 244 § 8; 1975 1st ex.s. c 260 § 9A.16.030.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.16.040 Justifiable homicide or use of deadly force by public officer, peace officer, person aiding. (1) Homicide or the use of deadly force is justifiable in the following cases:

(a) When a public officer is acting in obedience to the judgment of a competent court; or

(b) When necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.

(c) When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

(ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; or

(iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

(4) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section. [1986 c 209 § 2; 1975 1st ex.s. c 260 § 9A.16.040.]

Legislative recognition: "The legislature recognizes that RCW 9A.16.040 establishes a dual standard with respect to the use of deadly force by peace officers and private citizens, and further recognizes that private citizens' permissible use of deadly force under the authority of RCW 9.01.200, 9A.16.020, or 9A.16.050 is not restricted and remains broader than the limitations imposed on peace officers." [1986 c 209 § 3.]

9A.16.050 Homicide—By other person—When justifiable. Homicide is also justifiable when committed either:

(1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or

(2) In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling, or other place of abode, in which he is. [1975 1st ex.s. c 260 § 9A.16.050.]

9A.16.060 Duress. (1) In any prosecution for a crime, it is a defense that:

(a) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or another would be liable to immediate death or immediate grievous bodily injury; and

(b) That such apprehension was reasonable upon the part of the actor; and

(c) That the actor would not have participated in the crime except for the duress involved.

(2) The defense of duress is not available if the crime charged is murder or manslaughter.

(3) The defense of duress is not available if the actor intentionally or recklessly places himself in a situation in which it is probable that he will be subject to duress.

(4) The defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse. [1975 1st ex.s. c 260 § 9A.16.060.]

9A.16.070 Entrapment. (1) In any prosecution for a crime, it is a defense that:

(a) The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and

(b) The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit.

(2) The defense of entrapment is not established by a showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime. [1975 1st ex.s. c 260 § 9A.16.070.]

9A.16.080 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense. In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer, by the owner of the mercantile establishment, or by the owner's authorized employee or agent, and that such peace officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft or shoplifting on such premises of such merchandise. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise. [1975 1st ex.s. c 260 § 9A.16.080.]

9A.16.090 Intoxication. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such mental state. [1975 1st ex.s. c 260 § 9A.16.090.]

9A.16.100 Use of force on children—Policy—Actions presumed unreasonable. It is the policy of this state to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. However, the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child. Any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) interfering with a child's breathing; (5) threatening a child with a deadly weapon; or (6) doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive. [1986 c 149 § 1.]

Chapter 9A.20

CLASSIFICATION OF CRIMES

Sections

9A.20.010	Classification and designation of crimes.
9A.20.020	Authorized sentences for crimes committed before July 1, 1984.
9A.20.021	Maximum sentences for crimes committed July 1, 1984, and after.
9A.20.030	Alternative to a fine—Restitution.
9A.20.040	Prosecutions related to felonies defined outside Title 9A RCW.

Assessments required of convicted persons
misdemeanants: RCW 10.64.120.
parolees: RCW 72.04A.120.
probationers: RCW 9.94A.270.

9A.20.010 Classification and designation of crimes.

(1) Classified Felonies. (a) The particular classification of each felony defined in Title 9A RCW is expressly designated in the section defining it.

(b) For purposes of sentencing, classified felonies are designated as one of three classes, as follows:

- (i) Class A felony; or
- (ii) Class B felony; or
- (iii) Class C felony.

(2) Misdemeanors and Gross Misdemeanors. (a) Any crime punishable by a fine of not more than one thousand dollars, or by imprisonment in a county jail for not more than ninety days, or by both such fine and imprisonment is a misdemeanor. Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor.

(b) All crimes other than felonies and misdemeanors are gross misdemeanors. [1984 c 258 § 808; 1975 1st ex.s. c 260 § 9A.20.010.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

9A.20.020 Authorized sentences for crimes committed before July 1, 1984. (1) Felony. Every person convicted of a classified felony shall be punished as follows:

(a) For a class A felony, by imprisonment in a state correctional institution for a maximum term fixed by the court of not less than twenty years, or by a fine in an amount fixed by the court of not more than fifty thousand dollars, or by both such imprisonment and fine;

(b) For a class B felony, by imprisonment in a state correctional institution for a maximum term of not more than ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such imprisonment and fine;

(c) For a class C felony, by imprisonment in a state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than ten thousand dollars, or by both such imprisonment and fine.

(2) Gross Misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed prior to July 1, 1984. [1982 c 192 § 9; 1981 c 137 § 37; 1975-'76 2nd ex.s. c 38 § 2; 1975 1st ex.s. c 260 § 9A.20.020.]

Severability—1981 c 137: See RCW 9.94A.910.

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after. (1) Felony. No person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

(2) Gross Misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a

fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984. [1982 c 192 § 10.]

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

9A.20.030 Alternative to a fine—Restitution. (1) If a person has gained money or property or caused a victim to lose money or property through the commission of a crime, upon conviction thereof or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, the court, in lieu of imposing the fine authorized for the offense under RCW 9A.20.020, may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the commission of a crime. Such amount may be used to provide restitution to the victim at the order of the court. It shall be the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court shall make a finding as to the amount of the defendant's gain or victim's loss from the crime, and if the record does not contain sufficient evidence to support such finding the court may conduct a hearing upon the issue. For purposes of this section, the terms "gain" or "loss" refer to the amount of money or the value of property or services gained or lost.

(2) Notwithstanding any other provision of law, this section also applies to any corporation or joint stock association found guilty of any crime. [1982 1st ex.s. c 47 § 12; 1979 c 29 § 3; 1975 1st ex.s. c 260 § 9A.20.030.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Restitution

condition of probation: RCW 9.95.210.

condition to suspending sentence: RCW 9.92.060.

disposition when victim not found or dead: RCW 7.68.290.

9A.20.040 Prosecutions related to felonies defined outside Title 9A RCW. In any prosecution under this title where the grade or degree of a crime is determined by reference to the degree of a felony for which the defendant or another previously had been sought, arrested, charged, convicted, or sentenced, if such felony is defined by a statute of this state which is not in Title 9A RCW, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this title;

(2) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is eight years or more, but less than twenty years, such felony shall be treated as a class B felony for purposes of this title;

(3) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this title. [1975 1st ex.s. c 260 § 9A.20.040.]

Chapter 9A.28

ANTICIPATORY OFFENSES

Sections

9A.28.010	Prosecutions based on felonies defined outside Title 9A RCW.
9A.28.020	Criminal attempt.
9A.28.030	Criminal solicitation.
9A.28.040	Criminal conspiracy.

9A.28.010 Prosecutions based on felonies defined outside Title 9A RCW. In any prosecution under this title for attempt, solicitation, or conspiracy to commit a felony defined by a statute of this state which is not in this title, unless otherwise provided:

(1) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is twenty years or more, such felony shall be treated as a class A felony for purposes of this title;

(2) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is eight years or more but less than twenty years, such felony shall be treated as a class B felony for purposes of this title;

(3) If the maximum sentence of imprisonment authorized by law upon conviction of such felony is less than eight years, such felony shall be treated as a class C felony for purposes of this title. [1975 1st ex.s. c 260 § 9A.28.010.]

9A.28.020 Criminal attempt. (1) A person is guilty of an attempt to commit crime if, with intent to commit a specific crime, he does any act which is a substantial step toward the commission of that crime.

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.

(3) An attempt to commit a crime is a:

(a) Class A felony when the crime attempted is murder in the first degree or arson in the first degree;

(b) Class B felony when the crime attempted is a class A felony other than murder in the first degree or arson in the first degree;

(c) Class C felony when the crime attempted is a class B felony;

(d) Gross misdemeanor when the crime attempted is a class C felony;

(e) Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor. [1981 c 203 § 3; 1975 1st ex.s. c 260 § 9A.28.020.]

9A.28.030 Criminal solicitation. (1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

(2) Criminal solicitation shall be punished in the same manner as criminal attempt under RCW 9A.28.020. [1975 1st ex.s. c 260 § 9A.28.030.]

9A.28.040 Criminal conspiracy. (1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

(2) It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

- (a) Has not been prosecuted or convicted; or
- (b) Has been convicted of a different offense; or
- (c) Is not amenable to justice; or
- (d) Has been acquitted; or
- (e) Lacked the capacity to commit an offense.

(3) Criminal conspiracy is a:

- (a) Class A felony when an object of the conspiratorial agreement is murder in the first degree;
- (b) Class B felony when an object of the conspiratorial agreement is a class A felony other than murder in the first degree;
- (c) Class C felony when an object of the conspiratorial agreement is a class B felony;
- (d) Gross misdemeanor when an object of the conspiratorial agreement is a class C felony;
- (e) Misdemeanor when an object of the conspiratorial agreement is a gross misdemeanor or misdemeanor. [1975 1st ex.s. c 260 § 9A.28.040.]

Chapter 9A.32 HOMICIDE

Sections

9A.32.010	Homicide defined.
9A.32.020	Premeditation—Limitations.
9A.32.030	Murder in the first degree.
9A.32.040	Murder in the first degree—Sentence.
9A.32.050	Murder in the second degree.
9A.32.055	Homicide by abuse.
9A.32.060	Manslaughter in the first degree.
9A.32.070	Manslaughter in the second degree.

Capital punishment—Aggravated first degree murder: Chapter 10.95 RCW.

Controlled substances homicide: RCW 69.50.415.

9A.32.010 Homicide defined. Homicide is the killing of a human being by the act, procurement or omission of another, death occurring within three years and a day, and is either (1) murder, (2) homicide by abuse, (3) manslaughter, (4) excusable homicide, or (5) justifiable

homicide. [1987 c 187 § 2; 1983 c 10 § 1; 1975 1st ex.s. c 260 § 9A.32.010.]

Excusable homicide: RCW 9A.16.030.

Justifiable homicide: RCW 9A.16.040 and 9A.16.050.

9A.32.020 Premeditation—Limitations. (1) As used in this chapter, the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in point of time.

(2) Nothing contained in this chapter shall affect RCW 46.61.520. [1975 1st ex.s. c 260 § 9A.32.020.]

9A.32.030 Murder in the first degree. (1) A person is guilty of murder in the first degree when:

(a) With a premeditated intent to cause the death of another person, he causes the death of such person or of a third person; or

(b) Under circumstances manifesting an extreme indifference to human life, he engages in conduct which creates a grave risk of death to any person, and thereby causes the death of a person; or

(c) He commits or attempts to commit the crime of either (1) robbery, in the first or second degree, (2) rape in the first or second degree, (3) burglary in the first degree, (4) arson in the first degree, or (5) kidnapping, in the first or second degree, and; in the course of and in furtherance of such crime or in immediate flight therefrom, he, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(c) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the first degree is a class A felony. [1975-'76 2nd ex.s. c 38 § 3; 1975 1st ex.s. c 260 § 9A.32.030.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.32.040 Murder in the first degree—Sentence. Notwithstanding RCW 9A.32.030(2), any person convicted of the crime of murder in the first degree shall be sentenced to life imprisonment. [1982 c 10 § 2. Prior: (1) 1981 c 138 § 21; 1977 ex.s. c 206 § 3; 1975 1st ex.s. c 260 § 9A.32.040. (2) 1981 c 136 § 55, repealed by 1982 c 10 § 18.]

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 138: See RCW 10.95.900.

Effective date—1981 c 136: See RCW 72.09.900.

Capital punishment—*Aggravated first degree murder: Chapter 10.95 RCW.*

9A.32.050 Murder in the second degree. (1) A person is guilty of murder in the second degree when:

(a) With intent to cause the death of another person but without premeditation, he causes the death of such person or of a third person; or

(b) He commits or attempts to commit any felony other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he, or another participant, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision (1)(b) in which the defendant was not the only participant in the underlying crime, if established by the defendant by a preponderance of the evidence, it is a defense that the defendant:

(i) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and

(ii) Was not armed with a deadly weapon, or any instrument, article, or substance readily capable of causing death or serious physical injury; and

(iii) Had no reasonable grounds to believe that any other participant was armed with such a weapon, instrument, article, or substance; and

(iv) Had no reasonable grounds to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(2) Murder in the second degree is a class A felony. [1975-'76 2nd ex.s. c 38 § 4; 1975 1st ex.s. c 260 § 9A.32.050.]

Effective date—**Severability**—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.32.055 Homicide by abuse. (1) A person is guilty of homicide by abuse if, under circumstances manifesting an extreme indifference to human life, the person causes the death of a child or person under sixteen years of age, a developmentally disabled person, or a dependent adult, and the person has previously engaged in a pattern or practice of assault or torture of said child, person under sixteen years of age, developmentally disabled person, or dependent person.

(2) As used in this section, "dependent adult" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(3) Homicide by abuse is a class A felony. [1987 c 187 § 1.]

9A.32.060 Manslaughter in the first degree. (1) A person is guilty of manslaughter in the first degree when:

(a) He recklessly causes the death of another person; or

(b) He intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child.

(2) Manslaughter in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.32.060.]

9A.32.070 Manslaughter in the second degree. (1) A person is guilty of manslaughter in the second degree when, with criminal negligence, he causes the death of another person.

(2) Manslaughter in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.32.070.]

Abortion: Chapter 9.02 RCW.

Chapter 9A.36

ASSAULT AND OTHER CRIMES INVOLVING PHYSICAL HARM

Sections

9A.36.010	Assault in the first degree.
9A.36.011	Assault in the first degree.
9A.36.020	Assault in the second degree.
9A.36.021	Assault in the second degree.
9A.36.030	Assault in the third degree.
9A.36.031	Assault in the third degree.
9A.36.040	Simple assault.
9A.36.041	Assault in the fourth degree.
9A.36.050	Reckless endangerment.
9A.36.060	Promoting a suicide attempt.
9A.36.070	Coercion.
9A.36.080	Malicious harassment.
9A.36.090	Threats against governor or family.
9A.36.100	Custodial assault.
9A.36.110	Toxic endangerment.

9A.36.010 Assault in the first degree. (Effective until July 1, 1988.) (1) Every person, who with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another, shall be guilty of assault in the first degree when he:

(a) Shall assault another with a firearm or any deadly weapon or by any force or means likely to produce death; or

(b) Shall administer to or cause to be taken by another, poison or any other destructive or noxious thing so as to endanger the life of another person.

(2) Assault in the first degree is a class A felony. [1975 1st ex.s. c 260 § 9A.36.010.]

9A.36.011 Assault in the first degree. (Effective July 1, 1988.) (1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

(a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or

(b) Administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(c) Assaults another and inflicts great bodily harm.

(2) Assault in the first degree is a class A felony. [1986 c 257 § 4.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

9A.36.020 Assault in the second degree. (Effective until July 1, 1988.) (1) Every person who, under circumstances not amounting to assault in the first degree shall be guilty of assault in the second degree when he:

(a) With intent to injure, shall unlawfully administer to or cause to be taken by another, poison or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or

(b) Shall knowingly inflict grievous bodily harm upon another with or without a weapon; or

(c) Shall knowingly assault another with a weapon or other instrument or thing likely to produce bodily harm; or

(d) Shall knowingly assault another with intent to commit a felony.

(2) Assault in the second degree is a class B felony. [1979 ex.s. c 244 § 9; 1975-'76 2nd ex.s. c 38 § 5; 1975 1st ex.s. c 260 § 9A.36.020.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.36.021 Assault in the second degree. (Effective July 1, 1988.) (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 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.

(2) Assault in the second degree is a class B felony. [1987 c 324 § 2; 1986 c 257 § 5.]

Effective date—1987 c 324: See note following RCW 9A.04.110.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

9A.36.030 Assault in the third degree. (Effective until July 1, 1988.) (1) Every person who, under circumstances not amounting to assault in either the first or second degree, shall be guilty of assault in the third degree when he:

(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 shall assault another; or

(b) With criminal negligence, shall cause physical injury to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(c) Assaults a person employed as a transit operator or driver by a public or private transit company while that person is operating or is in control of a vehicle owned or operated by the transit company; or

(d) Assaults a fire fighter or other employee of a fire department or fire protection district who was performing his or her official duties at the time of the assault.

(2) Assault in the third degree is a class C felony. [1986 c 188 § 1; 1982 c 140 § 1; 1979 ex.s. c 244 § 10; 1975 1st ex.s. c 260 § 9A.36.030.]

Reviser's note: This section was also repealed by 1986 c 257 § 9, effective July 1, 1988, without cognizance of its amendment by 1986 c 188 § 1. Later enactment, see RCW 9A.36.031.

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.36.030 Assault in the third degree. [1982 c 140 § 1; 1979 ex.s. c 244 § 10; 1975 1st ex.s. c 260 § 9A.36.030.] Repealed by 1986 c 257 § 9, effective July 1, 1988.

Reviser's note: RCW 9A.36.030 was both amended and repealed during the 1986 legislative session, each without reference to the other. It will be decodified July 1, 1988, pursuant to RCW 1.12.025. See Table of Disposition of Former RCW Sections. Later enactment, see RCW 9A.36.031.

9A.36.031 Assault in the third degree. (Effective July 1, 1988.) (1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver by a public or private transit company while that person is operating or is in control of a vehicle owned or operated by the transit company; or

(c) 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

(d) Assaults a fire fighter or other employee of a fire department or fire protection district who was performing his or her official duties at the time of the assault.

(2) Assault in the third degree is a class C felony. [1986 c 257 § 6.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

9A.36.040 Simple assault. (Effective until July 1, 1988.) (1) Every person who shall commit an assault or an assault and battery not amounting to assault in either the first, second, or third degree shall be guilty of simple assault.

(2) Simple assault is a gross misdemeanor. [1985 c 303 § 8; 1984 c 263 § 18; 1975 1st ex.s. c 260 § 9A.36.040.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

9A.36.041 Assault in the fourth degree. (Effective July 1, 1988.) (1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2) Assault in the fourth degree is a gross misdemeanor. [1987 c 188 § 2; 1986 c 257 § 7.]

Effective date—1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

Effective date—1987 c 188: See note following RCW 9A.36.100.

Severability—1986 c 257: See note following RCW 9A.56.010.

9A.36.050 Reckless endangerment. (1) A person is guilty of reckless endangerment when he recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.36.050.]

9A.36.060 Promoting a suicide attempt. (1) A person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide.

(2) Promoting a suicide attempt is a class C felony. [1975 1st ex.s. c 260 § 9A.36.060.]

9A.36.070 Coercion. (1) A person is guilty of coercion if by use of a threat he compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he has a legal right to engage in.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in RCW 9A.04.110(25)(a), (b), or (c).

(3) Coercion is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.36.070.]

9A.36.080 Malicious harassment. (1) A person is guilty of malicious harassment if he maliciously and with the intent to intimidate or harass another person because of that person's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap:

(a) Causes physical injury to another person; or

(b) By words or conduct places another person in reasonable fear of harm to his person or property or harm to the person or property of a third person: *Provided, however,* That it shall not constitute malicious harassment for a person to speak or act in a critical, insulting, or deprecatory way so long as his or her words or actions do not constitute a threat of harm to the body or property of another person; or

(c) Causes physical damage to or destruction of the property of another person.

(2) Malicious harassment is a class C felony.

(3) In addition to the criminal penalty provided in subsection (2) of this section, there is hereby created a civil cause of action for malicious harassment. A person may be liable to the victim of malicious harassment for actual damages and punitive damages of up to ten thousand dollars.

(4) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law. [1984 c 268 § 1; 1981 c 267 § 1.]

Harassment: Chapters 9A.46 and 10.14 RCW.

9A.36.090 Threats against governor or family. (1) Whoever knowingly and wilfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, mis-sive, or document containing any threat to take the life

of or to inflict bodily harm upon the governor of the state or his immediate family, the governor-elect, the lieutenant governor, other officer next in the order of succession to the office of governor of the state, or the lieutenant governor-elect, or knowingly and wilfully otherwise makes any such threat against the governor, governor-elect, lieutenant governor, other officer next in the order of succession to the office of governor, or lieutenant governor-elect, shall be guilty of a class C felony.

(2) As used in this section, the term "governor-elect" and "lieutenant governor-elect" means such persons as are the successful candidates for the offices of governor and lieutenant governor, respectively, as ascertained from the results of the general election. As used in this section, the phrase "other officer next in the order of succession to the office of governor" means the person other than the lieutenant governor next in order of succession to the office of governor under Article 3, section 10 of the state Constitution.

(3) The Washington state patrol may investigate for violations of this section. [1982 c 185 § 1.]

Reviser's note: 1982 c 185 § 2 directed that this section constitute a new chapter in Title 9 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 9A.36 RCW.

9A.36.100 Custodial assault. (1) A person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person:

(a) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any juvenile corrections institution or local juvenile detention facilities who was performing official duties at the time of the assault; or

(b) Assaults a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent thereof at any adult corrections institution or local adult detention facilities who was performing official duties at the time of the assault.

(2) Custodial assault is a class C felony. [1987 c 188 § 1.]

Effective date—1987 c 188: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 188 § 3.]

9A.36.110 Toxic endangerment. (1) A person is guilty of toxic endangerment if he or she:

(a) Knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance or toxin in violation of state law; and

(b) Knows that such conduct places another person in imminent danger of death or serious bodily injury.

(2) As used in this section, "imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time if the danger is not eliminated.

(3) Toxic endangerment is a class B felony. [1987 3rd ex.s. c 2 § 34.]

Severability—Continuation of act—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

Chapter 9A.40

KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE

Sections

9A.40.010	Definitions.
9A.40.020	Kidnapping in the first degree.
9A.40.030	Kidnapping in the second degree.
9A.40.040	Unlawful imprisonment.
9A.40.060	Custodial interference in the first degree.
9A.40.070	Custodial interference in the second degree.
9A.40.080	Custodial interference—Assessment of costs—Defense—Consent defense, restricted.

9A.40.010 Definitions. The following definitions apply in this chapter:

(1) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him has not acquiesced.

(2) "Abduct" means to restrain a person by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly force;

(3) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse. [1975 1st ex.s. c 260 § 9A.40.010.]

9A.40.020 Kidnapping in the first degree. (1) A person is guilty of kidnapping in the first degree if he intentionally abducts another person with intent:

(a) To hold him for ransom or reward, or as a shield or hostage; or

(b) To facilitate commission of any felony or flight thereafter; or

(c) To inflict bodily injury on him; or

(d) To inflict extreme mental distress on him or a third person; or

(e) To interfere with the performance of any governmental function.

(2) Kidnapping in the first degree is a class A felony. [1975 1st ex.s. c 260 § 9A.40.020.]

9A.40.030 Kidnapping in the second degree. (1) A person is guilty of kidnapping in the second degree if he intentionally abducts another person under circumstances not amounting to kidnapping in the first degree.

(2) In any prosecution for kidnapping in the second degree, it is a defense if established by the defendant by a preponderance of the evidence that (a) the abduction does not include the use of or intent to use or threat to

use deadly force, and (b) the actor is a relative of the person abducted, and (c) the actor's sole intent is to assume custody of that person. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, any other crime.

(3) Kidnapping in the second degree is a class B felony. [1975 1st ex.s. c 260 § 9A.40.030.]

9A.40.040 Unlawful imprisonment. (1) A person is guilty of unlawful imprisonment if he knowingly restrains another person.

(2) Unlawful imprisonment is a class C felony. [1975 1st ex.s. c 260 § 9A.40.040.]

9A.40.060 Custodial interference in the first degree.

(1) A relative of a child under the age of eighteen or of an incompetent person is guilty of custodial interference in the first degree if, with the intent to deny access to the child or incompetent person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the child or incompetent person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person and:

(a) Intends to hold the child or incompetent person permanently or for a protracted period; or

(b) Exposes the child or incompetent person to a substantial risk of illness or physical injury; or

(c) Causes the child or incompetent person to be removed from the state of usual residence; or

(d) Retains, detains, or conceals the child or incompetent person in another state after expiration of any authorized visitation period with intent to intimidate or harass a parent, guardian, institution, agency, or other person having lawful right to physical custody or to prevent a parent, guardian, institution, agency, or other person with lawful right to physical custody from regaining custody.

(2) A parent or other person acting under the directions of the parent is guilty of custodial interference in the first degree if the parent or other person intentionally takes, entices, retains, or conceals a child, under the age of eighteen years and for whom no lawful custody order has been entered by a court of competent jurisdiction, from the other parent with intent to deprive the other parent from access to the child permanently or for a protracted period.

(3) Custodial interference in the first degree is a class C felony. [1984 c 95 § 1.]

Severability—1984 c 95: "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." [1984 c 95 § 8.]

9A.40.070 Custodial interference in the second degree. (1) A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to

physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person.

(2) The first conviction of custodial interference in the second degree is a gross misdemeanor. The second or subsequent conviction of custodial interference in the second degree is a class C felony. [1984 c 95 § 2.]

Severability—1984 c 95: See note following RCW 9A.40.060.

9A.40.080 Custodial interference—Assessment of costs—Defense—Consent defense, restricted. (1) Any reasonable expenses incurred in locating or returning a child or incompetent person shall be assessed against a defendant convicted under RCW 9A.40.060 or 9A.40.070.

(2) In any prosecution of custodial interference in the first or second degree, it is a complete defense, if established by the defendant by a preponderance of the evidence, that the defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, and that the belief in the existence of the imminent physical harm was reasonable.

(3) Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under RCW 9A.40.060 or 9A.40.070. [1984 c 95 § 3.]

Severability—1984 c 95: See note following RCW 9A.40.060.
Child custody, action by relative: RCW 26.09.255.

Chapter 9A.42

CRIMINAL MISTREATMENT

Sections

9A.42.010	Definitions.
9A.42.020	Criminal mistreatment in the first degree.
9A.42.030	Criminal mistreatment in the second degree.
9A.42.040	Withdrawal of life support systems.
9A.42.050	Defense of financial inability.

9A.42.010 Definitions. As used in this chapter:

(1) "Basic necessities of life" means food, shelter, clothing, and health care.

(2)(a) "Bodily injury" 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 high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily part or organ.

(3) "Child" means a person under eighteen years of age.

(4) "Dependent person" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life.

(5) "Parent" has its ordinary meaning and also includes a guardian and the authorized agent of a parent or guardian. [1986 c 250 § 1.]

9A.42.020 Criminal mistreatment in the first degree.

(1) A parent of a child or the person entrusted with the physical custody of a child or dependent person is guilty of criminal mistreatment in the first degree if he or she recklessly causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the first degree is a class B felony. [1986 c 250 § 2.]

9A.42.030 Criminal mistreatment in the second degree.

(1) A parent of a child or the person entrusted with the physical custody of a child or dependent person is guilty of criminal mistreatment in the second degree if he or she recklessly either (a) creates an imminent and substantial risk of death or great bodily harm, or (b) causes substantial bodily harm by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the second degree is a class C felony. [1986 c 250 § 3.]

9A.42.040 Withdrawal of life support systems.

RCW 9A.42.020 and 9A.42.030 do not apply to a decision to withdraw life support systems made in accordance with law by a health care professional and family members or others with a legal duty to care for the patient. [1986 c 250 § 4.]

9A.42.050 Defense of financial inability.

In any prosecution for criminal mistreatment, it shall be a defense that the withholding of the basic necessities of life is due to financial inability only if the person charged has made a reasonable effort to obtain adequate assistance. [1986 c 250 § 5.]

Chapter 9A.44

SEXUAL OFFENSES

Sections

9A.44.010	Definitions.
9A.44.020	Testimony—Evidence—Written motion—Admissibility.
9A.44.030	Defenses to prosecution under this chapter.
9A.44.040	Rape in the first degree.
9A.44.045	Minimum term for first degree rape—Restrictions on release from confinement—Application to offenses before July 1, 1984.
9A.44.050	Rape in the second degree.
9A.44.060	Rape in the third degree.
9A.44.070	Statutory rape in the first degree.
9A.44.080	Statutory rape in the second degree.
9A.44.090	Statutory rape in the third degree.
9A.44.100	Indecent liberties.
9A.44.120	Admissibility of child's statement—Conditions.
9A.44.900	Decodifications and additions to this chapter.
9A.44.901	Construction—Sections decodified and added to this chapter.
9A.44.902	Effective date—1979 ex.s. c 244.

Council on child abuse and neglect: Chapter 43.121 RCW.
Witnesses: Rules of court: ER 601 through 615.

9A.44.010 Definitions. As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(3) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause;

(4) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act;

(5) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped;

(6) "Consent" means that at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual intercourse. [1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.]

9A.44.020 Testimony—Evidence—Written motion—Admissibility. (1) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.

(2) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

(3) In any prosecution for the crime of rape or for an attempt to commit, or an assault with an intent to commit any such crime evidence of the victim's past sexual behavior including but not limited to the victim's marital

behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent only pursuant to the following procedure:

(a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

(b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

(d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(4) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (3) of this section concerning such evidence. [1975 1st ex.s. c 14 § 2. Formerly RCW 9.79.150.]

9A.44.030 Defenses to prosecution under this chapter. (1) In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.

(2) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: *Provided*, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be older based upon declarations as to age by the alleged

victim. [1975 1st ex.s. c 14 § 3. Formerly RCW 9.79.160.]

9A.44.040 Rape in the first degree. (1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

- (a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
- (b) Kidnaps the victim; or
- (c) Inflicts serious physical injury; or
- (d) Feloniously enters into the building or vehicle where the victim is situated.

(2) Rape in the first degree is a class A felony. [1983 c 118 § 1; 1983 c 73 § 1; 1982 c 192 § 11; 1982 c 10 § 3. Prior: (1) 1981 c 137 § 36; 1979 ex.s. c 244 § 1; 1975 1st ex.s. c 247 § 1; 1975 1st ex.s. c 14 § 4. (2) 1981 c 136 § 57, repealed by 1982 c 10 § 18. Formerly RCW 9.79.170.]

Reviser's note: This section was amended by 1983 c 73 § 1 and by 1983 c 118 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1983 c 73: "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." [1983 c 73 § 2.]

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 137: See RCW 9.94A.910.

Effective date—1981 c 136: See RCW 72.09.900.

9A.44.045 Minimum term for first degree rape—Restrictions on release from confinement—Application to offenses before July 1, 1984. No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility: *Provided*, That every person convicted of rape in the first degree shall be confined for a minimum of three years: *Provided further*, That the board of prison terms and paroles shall have authority to set a period of confinement greater than three years but shall never reduce the minimum three-year period of confinement; nor shall the board release the convicted person during the first three years of confinement as a result of any type of good time calculation; nor shall the department of corrections permit the convicted person to participate in any work release program or furlough program during the first three years of confinement. This section applies only to offenses committed prior to July 1, 1984. [1982 c 192 § 12.]

9A.44.050 Rape in the second degree. (1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

- (a) By forcible compulsion; or
- (b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated.

(2) Rape in the second degree is a class B felony. [1983 c 118 § 2; 1979 ex.s. c 244 § 2; 1975 1st ex.s. c 14 § 5. Formerly RCW 9.79.180.]

9A.44.060 Rape in the third degree. (1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:

(a) Where the victim did not consent as defined in RCW 9A.44.010(6), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a class C felony. [1979 ex.s. c 244 § 3; 1975 1st ex.s. c 14 § 6. Formerly RCW 9.79.190.]

9A.44.070 Statutory rape in the first degree. (1) A person over thirteen years of age is guilty of statutory rape in the first degree when the person engages in sexual intercourse with another person who is less than eleven years old.

(2) Statutory rape in the first degree is a class A felony. No person convicted of statutory rape in the first degree shall be granted a deferred or suspended sentence except under RCW 9.94A.120(7). [1986 c 257 § 31; 1979 ex.s. c 244 § 4; 1975 1st ex.s. c 14 § 7. Formerly RCW 9.79.200.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

9A.44.080 Statutory rape in the second degree. (1) A person over sixteen years of age is guilty of statutory rape in the second degree when such person engages in sexual intercourse with another person, not married to the perpetrator, who is eleven years of age or older but less than fourteen years old.

(2) Statutory rape in the second degree is a class B felony. [1979 ex.s. c 244 § 5; 1975 1st ex.s. c 14 § 8. Formerly RCW 9.79.210.]

9A.44.090 Statutory rape in the third degree. (1) A person over eighteen years of age is guilty of statutory rape in the third degree when such person engages in sexual intercourse with another person, not married to the perpetrator, who is fourteen years of age or older but less than sixteen years old.

(2) Statutory rape in the third degree is a class C felony. [1979 ex.s. c 244 § 6; 1975 1st ex.s. c 14 § 9. Formerly RCW 9.79.220.]

9A.44.100 Indecent liberties. (1) A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another:

- (a) By forcible compulsion; or
- (b) When the other person is less than fourteen years of age; or

(c) When the other person is less than sixteen years of age and the perpetrator is more than forty-eight months older than the person and is in a position of authority over the person; or

(d) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless.

(2) For purposes of this section:

(a) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party.

(b) "Person in a position of authority" means any person who is a parent or acting in the place of a parent and is charged with any of a parent's rights, duties, or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, education, or supervision of a child, either independently or through another, no matter how briefly, at the time of the act.

(3) Indecent liberties is a class B felony. [1986 c 131 § 1; 1975 1st ex.s. c 260 § 9A.88.100. Formerly RCW 9A.88.100.]

9A.44.120 Admissibility of child's statement—Conditions. A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings in the courts of the state of Washington if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness: *Provided*, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement. [1985 c 404 § 1; 1982 c 129 § 2.]

Severability—1982 c 129: See note following RCW 9A.04.080.

9A.44.900 Decodifications and additions to this chapter. RCW 9.79.140, 9.79.150, 9.79.160, 9.79.170 as now or hereafter amended, 9.79.180 as now or hereafter amended, 9.79.190 as now or hereafter amended, 9.79.200 as now or hereafter amended, 9.79.210 as now or hereafter amended, 9.79.220 as now or hereafter amended, 9A.88.020, and 9A.88.100 are each decodified and are each added to Title 9A RCW as a new chapter with the designation chapter 9A.44 RCW. [1979 ex.s. c 244 § 17.]

9A.44.901 Construction—Sections decodified and added to this chapter. The sections decodified by RCW 9A.44.900 and added to Title 9A RCW as a new chapter with the designation chapter 9A.44 RCW shall be

construed as part of Title 9A RCW. [1979 ex.s. c 244 § 18.]

9A.44.902 Effective date—1979 ex.s. c 244. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979. [1979 ex.s. c 244 § 19.]

Chapter 9A.46 HARASSMENT

Sections

9A.46.010	Legislative finding.
9A.46.020	Definition—Penalties.
9A.46.030	Place where committed.
9A.46.040	Court-ordered requirements upon person charged with crime—Violation.
9A.46.050	Arrestment—No-contact order.
9A.46.060	Crimes included in harassment.
9A.46.070	Enforcement of orders restricting contact.
9A.46.080	Order restricting contact—Violation.
9A.46.090	Nonliability of peace officer.
9A.46.100	"Convicted," time when.
9A.46.900	Short title.
9A.46.905	Effective date—1985 c 288.
9A.46.910	Severability—1985 c 288.

Disclosure of information to person threatened or harassed by mentally ill person: RCW 71.05.390.

Harassment: Chapter 10.14 RCW.

9A.46.010 Legislative finding. The legislature finds that the prevention of serious, personal harassment is an important government objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.

The legislature further finds that the protection of such persons from harassment can be accomplished without infringing on constitutionally protected speech or activity. [1985 c 288 § 1.]

9A.46.020 Definition—Penalties. (1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

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

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

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

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

(2) A person who harasses another is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW, unless the person has previously been convicted in this or

any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW.

(3) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law. [1985 c 288 § 2.]

9A.46.030 Place where committed. Any harassment offense committed as set forth in RCW 9A.46.020 may be deemed to have been committed where the conduct occurred or at the place from which the threat or threats were made or at the place where the threats were received. [1985 c 288 § 3.]

9A.46.040 Court-ordered requirements upon person charged with crime—Violation. (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 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. [1985 c 288 § 4.]

9A.46.050 Arraignment—No-contact order. A defendant who is charged by citation, complaint, or information with an offense involving harassment and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information. At that appearance, the court shall determine the necessity of imposing a no-contact or no-harassment order or other conditions of pretrial release according to the procedures established by court rule for preliminary appearance or an arraignment. [1985 c 288 § 5.]

9A.46.060 Crimes included in harassment. As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

(1) Harassment (RCW 9A.46.020);

- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (*RCW 9A.36.010);
- (5) Assault in the second degree (*RCW 9A.36.020);
- (6) Simple assault (*RCW 9A.36.040);
- (7) Reckless endangerment (RCW 9A.36.050);
- (8) Extortion in the first degree (RCW 9A.56.120);
- (9) Extortion in the second degree (RCW 9A.56.130);
- (10) Coercion (RCW 9A.36.070);
- (11) Burglary in the first degree (RCW 9A.52.020);
- (12) Burglary in the second degree (RCW 9A.52.030);
- (13) Criminal trespass in the first degree (RCW 9A.52.070);
- (14) Criminal trespass in the second degree (RCW 9A.52.080);
- (15) Malicious mischief in the first degree (RCW 9A.48.070);
- (16) Malicious mischief in the second degree (RCW 9A.48.080);
- (17) Malicious mischief in the third degree (RCW 9A.48.090);
- (18) Kidnapping in the first degree (RCW 9A.40.020);
- (19) Kidnapping in the second degree (RCW 9A.40.030);
- (20) Unlawful imprisonment (RCW 9A.40.040);
- (21) Rape in the first degree (RCW 9A.44.040);
- (22) Rape in the second degree (RCW 9A.44.050);
- (23) Rape in the third degree (RCW 9A.44.060);
- (24) Indecent liberties (RCW 9A.44.100);
- (25) Statutory rape in the first degree (RCW 9A.44.070);
- (26) Statutory rape in the second degree (RCW 9A.44.080); and
- (27) Statutory rape in the third degree (RCW 9A.44.090). [1985 c 288 § 6.]

*Reviser's note: RCW 9A.36.010, 9A.36.020, and 9A.36.040 were repealed by 1986 c 257 § 9, effective July 1, 1987. For later enactment, see RCW 9A.36.011, 9A.36.021, and 9A.36.041, respectively.

9A.46.070 Enforcement of orders restricting contact. Any law enforcement agency in this state may enforce this chapter as it relates to orders restricting the defendants' ability to have contact with the victim or others. [1985 c 288 § 7.]

9A.46.080 Order restricting contact—Violation. 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 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. [1985 c 288 § 8.]

9A.46.090 Nonliability of peace officer. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of harassment brought by any party to the incident. [1985 c 288 § 9.]

9A.46.100 "Convicted," time when. As used in RCW 9.61.230 or 9A.46.020, a person has been "convicted" 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, posttrial motions, and appeals. [1985 c 288 § 10.]

9A.46.900 Short title. This act shall be known as the anti-harassment act of 1985. [1985 c 288 § 12.]

9A.46.905 Effective date—1985 c 288. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1985. [1985 c 288 § 15.]

9A.46.910 Severability—1985 c 288. 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. [1985 c 288 § 14.]

Chapter 9A.48

ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

Sections

9A.48.010	Definitions.
9A.48.020	Arson in the first degree.
9A.48.030	Arson in the second degree.
9A.48.040	Reckless burning in the first degree.
9A.48.050	Reckless burning in the second degree.
9A.48.060	Reckless burning—Defense.
9A.48.070	Malicious mischief in the first degree.
9A.48.080	Malicious mischief in the second degree.
9A.48.090	Malicious mischief in the third degree.
9A.48.100	Malicious mischief—"Physical damage" defined.

9A.48.010 Definitions. (1) For the purpose of this chapter, as now or hereinafter amended, unless the context indicates otherwise:

(a) "Building" has the definition in RCW 9A.04.110(5), and where a building consists of two or more units separately secured or occupied, each unit shall not be treated as a separate building;

(b) "Damages", in addition to its ordinary meaning, includes any charring, scorching, burning, or breaking, or agricultural or industrial sabotage, and shall include any diminution in the value of any property as a consequence of an act.

(2) To constitute arson it shall not be necessary that a person other than the actor should have had ownership in the building or structure damaged or set on fire. [1975-'76 2nd ex.s. c 38 § 6; 1975 1st ex.s. c 260 § 9A.48.010.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.48.020 Arson in the first degree. (1) A person is guilty of arson in the first degree if he knowingly and maliciously:

(a) Causes a fire or explosion which is manifestly dangerous to any human life, including firemen; or

(b) Causes a fire or explosion which damages a dwelling; or

(c) Causes a fire or explosion in any building in which there shall be at the time a human being who is not a participant in the crime; or

(d) Causes a fire or explosion on property valued at ten thousand dollars or more with intent to collect insurance proceeds.

(2) Arson in the first degree is a class A felony. [1981 c 203 § 2; 1975 1st ex.s. c 260 § 9A.48.020.]

9A.48.030 Arson in the second degree. (1) A person is guilty of arson in the second degree if he knowingly and maliciously causes a fire or explosion which damages a building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, or other motor vehicle, watercraft, aircraft, bridge, or trestle, or hay, grain, crop, or timber, whether cut or standing or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.

(2) Arson in the second degree is a class B felony. [1975 1st ex.s. c 260 § 9A.48.030.]

9A.48.040 Reckless burning in the first degree. (1) A person is guilty of reckless burning in the first degree if he recklessly damages a building or other structure or any vehicle, railway car, aircraft or watercraft or any hay, grain, crop, or timber whether cut or standing, by knowingly causing a fire or explosion.

(2) Reckless burning in the first degree is a class C felony. [1975 1st ex.s. c 260 § 9A.48.040.]

9A.48.050 Reckless burning in the second degree. (1) A person is guilty of reckless burning in the second degree if he knowingly causes a fire or explosion, whether on his own property or that of another, and thereby recklessly places a building or other structure, or any vehicle, railway car, aircraft, or watercraft, or any hay, grain, crop or timber, whether cut or standing, in danger of destruction or damage.

(2) Reckless burning in the second degree is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.48.050.]

9A.48.060 Reckless burning—Defense. In any prosecution for the crime of reckless burning in the first or second degrees, it shall be a defense if the defendant establishes by a preponderance of the evidence that:

(a) No person other than the defendant had a possessory, or pecuniary interest in the damaged or endangered property, or if other persons had such an interest, all of them consented to the defendant's conduct; and

(b) The defendant's sole intent was to destroy or damage the property for a lawful purpose. [1975 1st ex.s. c 260 § 9A.48.060.]

9A.48.070 Malicious mischief in the first degree. (1) A person is guilty of malicious mischief in the first degree if he knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding one thousand five hundred dollars;

(b) Causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or

(c) Causes an impairment of the safety, efficiency, or operation of an aircraft by physically damaging or tampering with the aircraft or aircraft equipment, fuel, lubricant, or parts.

(2) Malicious mischief in the first degree is a class B felony. [1983 1st ex.s. c 4 § 1; 1975 1st ex.s. c 260 § 9A.48.070.]

Severability—1983 1st ex.s. c 4: "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." [1983 1st ex.s. c 4 § 6.]

9A.48.080 Malicious mischief in the second degree. (1) A person is guilty of malicious mischief in the second degree if he knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding two hundred fifty dollars; or

(b) Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or

(c) Notwithstanding RCW 16.52.070, causes physical damage, destruction, or injury by amputation, mutilation, castration, or other malicious act to a horse, mule, cow, heifer, bull, steer, swine, goat, or sheep which is the property of another.

(2) Malicious mischief in the second degree is a class C felony. [1979 c 145 § 2; 1975 1st ex.s. c 260 § 9A.48.080.]

Action by owner of stolen livestock: RCW 4.24.320.

9A.48.090 Malicious mischief in the third degree. (1) A person is guilty of malicious mischief in the third degree if he knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree.

(2) Malicious mischief in the third degree is a gross misdemeanor if the damage to the property is in an

amount exceeding fifty dollars; otherwise, it is a misdemeanor. [1975 1st ex.s. c 260 § 9A.48.090.]

9A.48.100 Malicious mischief—"Physical damage" defined. For the purposes of RCW 9A.48.070 through 9A.48.090 inclusive:

(1) "Physical damage", in addition to its ordinary meaning, shall include the total or partial alteration, damage, obliteration, or erasure of records, information, data, computer programs, or their computer representations, which are recorded for use in computers or the impairment, interruption, or interference with the use of such records, information, data, or computer programs, or the impairment, interruption, or interference with the use of any computer or services provided by computers. "Physical damage" also includes any diminution in the value of any property as the consequence of an act;

(2) If more than one item of property is physically damaged as a result of a common scheme or plan by a person and the physical damage to the property would, when considered separately, constitute mischief in the third degree because of value, then the value of the damages may be aggregated in one count. If the sum of the value of all the physical damages exceeds two hundred fifty dollars, the defendant may be charged with and convicted of malicious mischief in the second degree. [1984 c 273 § 4; 1981 c 260 § 2. Prior: 1979 ex.s. c 244 § 11; 1979 c 145 § 3; 1977 ex.s. c 174 § 1; 1975 1st ex.s. c 260 § 9A.48.100.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

Action by owner of stolen livestock: RCW 4.24.320.

Computer trespass: RCW 9A.52.110 through 9A.52.130.

Chapter 9A.52

BURGLARY AND TRESPASS

Sections

9A.52.010	Definitions.
9A.52.020	Burglary in the first degree.
9A.52.030	Burglary in the second degree.
9A.52.040	Inference of intent.
9A.52.050	Other crime in committing burglary punishable.
9A.52.060	Making or having burglar tools.
9A.52.070	Criminal trespass in the first degree.
9A.52.080	Criminal trespass in the second degree.
9A.52.090	Criminal trespass—Defenses.
9A.52.095	Vehicle prowling in the first degree.
9A.52.100	Vehicle prowling in the second degree.
9A.52.110	Computer trespass in the first degree.
9A.52.120	Computer trespass in the second degree.
9A.52.130	Computer trespass—Commission of other crime.

9A.52.010 Definitions. The following definitions apply in this chapter:

(1) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property;

(2) "Enter". The word "enter" when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(3) "Enters or remains unlawfully". A person "enters or remains unlawfully" in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner. Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land;

(4) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer;

(5) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data;

(6) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means. [1985 c 289 § 1. Prior: 1984 c 273 § 5; 1984 c 49 § 1; 1975 1st ex.s. c 260 § 9A.52.010.]

9A.52.020 Burglary in the first degree. (1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling and if, in entering or while in the dwelling or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person therein.

(2) Burglary in the first degree is a class A felony. [1975 1st ex.s. c 260 § 9A.52.020.]

9A.52.030 Burglary in the second degree. (1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle.

(2) Burglary in the second degree is a class B felony. [1975-'76 2nd ex.s. c 38 § 7; 1975 1st ex.s. c 260 § 9A.52.030.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.52.040 Inference of intent. In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent

to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent. [1975 1st ex.s. c 260 § 9A.52.040.]

9A.52.050 Other crime in committing burglary punishable. Every person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. [1975 1st ex.s. c 260 § 9A.52.050.]

9A.52.060 Making or having burglar tools. (1) Every person who shall make or mend or cause to be made or mended, or have in his possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglar tools.

(2) Making or having burglar tools is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.52.060.]

9A.52.070 Criminal trespass in the first degree. (1) A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building.

(2) Criminal trespass in the first degree is a gross misdemeanor. [1979 ex.s. c 244 § 12; 1975 1st ex.s. c 260 § 9A.52.070.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.52.080 Criminal trespass in the second degree. (1) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor. [1979 ex.s. c 244 § 13; 1975 1st ex.s. c 260 § 9A.52.080.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.52.090 Criminal trespass—Defenses. In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a defense that:

(1) A building involved in an offense under RCW 9A.52.070 was abandoned; or

(2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain; or

(4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule,

ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process. [1986 c 219 § 2; 1975 1st ex.s. c 260 § 9A.52.090.]

9A.52.095 Vehicle prowling in the first degree. (1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a motor home, as defined in RCW 46.04.305, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the first degree is a class C felony. [1982 1st ex.s. c 47 § 13.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.52.100 Vehicle prowling in the second degree. (1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the second degree is a gross misdemeanor. [1982 1st ex.s. c 47 § 14; 1975 1st ex.s. c 260 § 9A.52.100.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.52.110 Computer trespass in the first degree. (1) A person is guilty of computer trespass in the first degree if the person, without authorization, intentionally gains access to a computer system or electronic data base of another; and

(a) The access is made with the intent to commit another crime; or

(b) The violation involves a computer or data base maintained by a government agency.

(2) Computer trespass in the first degree is a class C felony. [1984 c 273 § 1.]

9A.52.120 Computer trespass in the second degree. (1) A person is guilty of computer trespass in the second degree if the person, without authorization, intentionally gains access to a computer system or electronic data base of another under circumstances not constituting the offense in the first degree.

(2) Computer trespass in the second degree is a gross misdemeanor. [1984 c 273 § 2.]

9A.52.130 Computer trespass—Commission of other crime. A person who, in the commission of a computer trespass, commits any other crime may be punished for that other crime as well as for the computer

trespass and may be prosecuted for each crime separately. [1984 c 273 § 3.]

Physical damage to computer programs: RCW 9A.48.100.

Chapter 9A.56 THEFT AND ROBBERY

Sections

9A.56.010	Definitions.
9A.56.020	Theft—Definition, defense.
9A.56.030	Theft in the first degree.
9A.56.040	Theft in the second degree.
9A.56.050	Theft in the third degree.
9A.56.060	Unlawful issuance of checks or drafts.
9A.56.070	Taking motor vehicle without permission.
9A.56.080	Theft of livestock.
9A.56.095	Criminal possession of leased or rented machinery, equipment, or motor vehicle.
9A.56.100	Theft and larceny equated.
9A.56.110	Extortion—Definition.
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9A.56.140	Possessing stolen property—Definition—Access devices, presumption.
9A.56.150	Possessing stolen property in the first degree.
9A.56.160	Possessing stolen property in the second degree.
9A.56.170	Possessing stolen property in the third degree.
9A.56.180	Obscuring the identity of a machine.
9A.56.190	Robbery—Definition.
9A.56.200	Robbery in the first degree.
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9A.56.220	Theft of cable television services.
9A.56.230	Unlawful sale of cable television services.
9A.56.240	Forfeiture and disposal of device used to commit violation.
9A.56.250	Civil cause of action.
9A.56.260	Connection of channel converter.
9A.56.270	Shopping cart theft.

9A.56.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(2) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(3) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(4) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed.

(5) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(6) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(7) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, pledgee, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where such use is unauthorized by the partnership agreement;

(8) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

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

(10) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(11) "Stolen" means obtained by theft, robbery, or extortion;

(12) 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) Whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(13) "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) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle. [1987 c 140 § 1; 1986 c 257 § 2; 1985 c 382 § 1; 1984 c 273 § 6; 1975-'76 2nd ex.s. c 38 § 8; 1975 1st ex.s. c 260 § 9A.56.010.]

Severability—1986 c 257: "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." [1986 c 257 § 37.]

Severability—1985 c 382: "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." [1985 c 382 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.56.020 Theft—Definition, defense. (1) "Theft" means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value

thereof, with intent to deprive him of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him of such property or services.

(2) In any prosecution for theft, it shall be a sufficient defense that the property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable. [1975-'76 2nd ex.s. c 38 § 9; 1975 1st ex.s. c 260 § 9A.56.020.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.030 Theft in the first degree. (1) A person is guilty of theft in the first degree if he commits theft of:

(a) Property or services which exceed(s) one thousand five hundred dollars in value; or

(b) Property of any value taken from the person of another.

(2) Theft in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.56.030.]

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.040 Theft in the second degree. (1) A person is guilty of theft in the second degree if he commits theft of:

(a) Property or services which exceed(s) two hundred and fifty dollars in value, but does not exceed one thousand five hundred dollars in value; or

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or

(c) An access device; or

(d) A motor vehicle, of a value less than one thousand five hundred dollars; or

(e) A firearm, of a value less than one thousand five hundred dollars.

(2) Theft in the second degree is a class C felony. [1987 c 140 § 2; 1982 1st ex.s. c 47 § 15; 1975 1st ex.s. c 260 § 9A.56.040.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.050 Theft in the third degree. (1) A person is guilty of theft in the third degree if he commits theft of property or services which does not exceed two hundred and fifty dollars in value.

(2) Theft in the third degree is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.56.050.]

Civil action for shoplifting by adults, minors: RCW 4.24.230.

9A.56.060 Unlawful issuance of checks or drafts. (1) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or

draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he has not sufficient funds in, or credit with said bank or other depository, to meet said check or draft, in full upon its presentation, shall be guilty of unlawful issuance of bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

(2) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft on a bank or other depository for the payment of money and who issues a stop-payment order directing the bank or depository on which the check is drawn not to honor said check, and who fails to make payment of money in the amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within twenty days of issuing said check or draft shall be guilty of unlawful issuance of a bank check.

(3) When any series of transactions which constitute unlawful issuance of a bank check would, when considered separately, constitute unlawful issuance of a bank check in an amount of two hundred fifty dollars or less because of value, and the series of transactions are a part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining whether the unlawful issuance of a bank check is to be punished as a class C felony or a gross misdemeanor.

(4) Unlawful issuance of a bank check in an amount greater than two hundred fifty dollars is a class C felony.

(5) Unlawful issuance of a bank check in an amount of two hundred fifty dollars or less is a gross misdemeanor and shall be punished as follows:

(a) The court shall order the defendant to make full restitution;

(b) The defendant need not be imprisoned, but the court shall impose a minimum fine of five hundred dollars. Of the fine imposed, at least fifty dollars shall not be suspended or deferred. Upon conviction for a second offense within any twelve-month period, the court may suspend or defer only that portion of the fine which is in excess of five hundred dollars. [1982 c 138 § 1; 1979 ex.s. c 244 § 14; 1975 1st ex.s. c 260 § 9A.56.060.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

Maintenance by state treasurer of accounts in amount less than all warrants outstanding not a violation of RCW 9A.56.060(1): RCW 43.08.135.

9A.56.070 Taking motor vehicle without permission.

(1) Every person who shall without the permission of the owner or person entitled to the possession thereof intentionally take or drive away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, the property of another, shall be

deemed guilty of a felony, and every person voluntarily riding in or upon said automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken shall be equally guilty with the person taking or driving said automobile or motor vehicle and shall be deemed guilty of taking a motor vehicle without permission.

(2) Taking a motor vehicle without permission is a class C felony. [1975 1st ex.s. c 260 § 9A.56.070.]

9A.56.080 Theft of livestock. (1) Every person who, with intent to sell or exchange and to deprive or defraud the lawful owner thereof, wilfully takes, leads, or transports away, conceals, withholds, slaughters, or otherwise appropriates any horse, mule, cow, heifer, bull, steer, swine, or sheep is guilty of theft of livestock in the first degree.

(2) A person who commits what would otherwise be theft of livestock in the first degree but without intent to sell or exchange, and for the person's own use only, is guilty of theft of livestock in the second degree.

(3) Theft of livestock in the first degree is a class B felony.

(4) Theft of livestock in the second degree is a class C felony. [1986 c 257 § 32; 1977 ex.s. c 174 § 2; 1975 1st ex.s. c 260 § 9A.56.080.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17-35: See note following RCW 9.94A.030.

Action by owner of damaged or stolen livestock: RCW 4.24.320.

9A.56.095 Criminal possession of leased or rented machinery, equipment, or motor vehicle. (1) A person is guilty of criminal possession of leased or rented machinery, equipment or a motor vehicle if the value thereof exceeds one thousand five hundred dollars and if he:

(a) After renting machinery, equipment or a motor vehicle under an agreement in writing which provides for the return of said item to a particular place at a particular time, fails to return the item to said place within the time specified, is thereafter served by registered or certified mail addressed to him at his last known place of residence or business with a written demand to return said item within seventy-two hours from the time of the service of such demand, and wilfully neglects to return said item to any place of business of the lessor within five full business days from the date of service of said notice; or

(b) After leasing machinery, equipment or a motor vehicle under an agreement in writing which provides for periodic rental or lease payments for a period greater than six months duration, fails to pay the lessor of said item the periodic payments when due for a period of ninety days, is thereafter served by registered or certified mail addressed to him at his last known place of residence or business with a written demand to return the item to any place of business of the lessor within seventy-two hours from the time of the service of said demand and wilfully neglects to return said item to any place of business of the lessor within five full business days from the date of service of said notice.

(2) "Wilfully neglects" as used in this section means omits, fails or forbears with intent to deprive the owner of or exert unauthorized control over the property, and specifically excludes the failure to return the item because of a bona fide contract dispute with the owner.

(3) It shall be a defense to any civil action arising out of or involving the arrest or detention of any person who rents or leases machinery, equipment or a motor vehicle that he failed to return the item to any place of business of the lessor within five full business days after receiving written demand therefor.

Criminal possession of leased or rented machinery, equipment or a motor vehicle is a class C felony. [1977 ex.s. c 236 § 1.]

9A.56.100 Theft and larceny equated. All offenses defined as larcenies outside of this title shall be treated as thefts as provided in this title. [1975 1st ex.s. c 260 § 9A.56.100.]

9A.56.110 Extortion—Definition. "Extortion" means knowingly to obtain or attempt to obtain by threat property or services of the owner, as defined in RCW 9A.56.010(8) and specifically includes sexual favors. [1983 1st ex.s. c 4 § 2; 1975-'76 2nd ex.s. c 38 § 10. Prior: 1975 1st ex.s. c 260 § 9A.56.110.]

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

Effective date—**Severability**—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.56.120 Extortion in the first degree. (1) A person is guilty of extortion in the first degree if he commits extortion by means of a threat as defined in RCW 9A.04.110(25)(a), (b), or (c).

(2) Extortion in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.56.120.]

9A.56.130 Extortion in the second degree. (1) A person is guilty of extortion in the second degree if he commits extortion by means of a threat as defined in RCW 9A.04.110(25) (d) through (j).

(2) In any prosecution under this section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his sole purpose was to compel or induce the person threatened to take reasonable action to make good the wrong which was the subject of such threatened criminal charge.

(3) Extortion in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.56.130.]

9A.56.140 Possessing stolen property—Definition—Access devices, presumption. (1) "Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

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

(3) When a person not an issuer or agent thereof has in his possession or under his control stolen access devices issued in the names of two or more persons, he shall be presumed to know that they are stolen. This presumption may be rebutted by evidence raising a reasonable inference that the possession of such stolen access devices was without knowledge that they were stolen. [1987 c 140 § 3; 1975 1st ex.s. c 260 § 9A.56.140.]

9A.56.150 Possessing stolen property in the first degree. (1) A person is guilty of possessing stolen property in the first degree if he possesses stolen property which exceeds one thousand five hundred dollars in value.

(2) Possessing stolen property in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.56.150.]

9A.56.160 Possessing stolen property in the second degree. (1) A person is guilty of possessing stolen property in the second degree if:

(a) He possesses stolen property which exceeds two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value; or

(b) He possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(c) He possesses a stolen access device; or

(d) He possesses a stolen motor vehicle of a value less than one thousand five hundred dollars; or

(e) He possesses a stolen firearm.

(2) Possessing stolen property in the second degree is a class C felony. [1987 c 140 § 4; 1975 1st ex.s. c 260 § 9A.56.160.]

9A.56.170 Possessing stolen property in the third degree. (1) A person is guilty of possessing stolen property in the third degree if he possesses stolen property which does not exceed two hundred fifty dollars in value.

(2) Possessing stolen property in the third degree is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.56.170.]

9A.56.180 Obscuring the identity of a machine. (1) A person is guilty of obscuring the identity of a machine if he knowingly:

(a) Obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any vehicle, machine, engine, apparatus, appliance, or other device with intent to render it unidentifiable; or

(b) Possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale knowing that the serial number or other identification number or mark has been obscured.

(2) "Obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.

(3) Obscuring the identity of a machine is a gross misdemeanor. [1975-'76 2nd ex.s. c 38 § 11; 1975 1st ex.s. c 260 § 9A.56.180.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.56.190 Robbery—Definition. A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear. [1975 1st ex.s. c 260 § 9A.56.190.]

9A.56.200 Robbery in the first degree. (1) A person is guilty of robbery in the first degree if in the commission of a robbery or of immediate flight therefrom, he:

(a) Is armed with a deadly weapon; or

(b) Displays what appears to be a firearm or other deadly weapon; or

(c) Inflicts bodily injury.

(2) Robbery in the first degree is a class A felony. [1975 1st ex.s. c 260 § 9A.56.200.]

9A.56.210 Robbery in the second degree. (1) A person is guilty of robbery in the second degree if he commits robbery.

(2) Robbery in the second degree is a class B felony. [1975 1st ex.s. c 260 § 9A.56.210.]

9A.56.220 Theft of cable television services. (1) A person is guilty of theft of cable television services if:

(a) With intent to avoid payment of the lawful charge for any communication service of a cable system, he or she:

(i) Tampered with the equipment of the cable system, whether by mechanical, electrical, acoustical, or other means; or

(ii) Knowingly misrepresents a material fact; or

(iii) Uses any other artifice, trick, deception, code, or other device; and

(b) He or she wrongfully obtains cable communication services for himself or herself or another.

(2) RCW 9A.56.220 through 9A.56.250 do not apply to the interception or receipt by any individual or the assisting (including the manufacture or sale), of such interception or receipt of any satellite-transmitted programming for private use.

(4) Theft of cable television services is a gross misdemeanor. [1985 c 430 § 1.]

Reviser's note: Subsection (3) of this section was vetoed.

Severability—1985 c 430: "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." [1985 c 430 § 7.]

9A.56.230 Unlawful sale of cable television services.

(1) A person is guilty of unlawful sale of cable television services if, with intent to avoid payment of the lawful

charge for any communications service of a cable system, he or she offers for sale or otherwise makes available any telecommunications decoder or descrambler that defeats a mechanism of electronic signal encryption, or that restricts delivery of individually addressed switching imposed by the cable system.

(2) Unlawful sale of cable television services is a gross misdemeanor. [1985 c 430 § 2.]

Severability—1985 c 430: See note following RCW 9A.56.220.

9A.56.240 Forfeiture and disposal of device used to commit violation. Upon conviction of theft or unlawful sale of cable television services and upon motion and hearing, the court shall order the forfeiture of any decoder, descrambler, or other device used in committing the violation of RCW 9A.56.220 or 9A.56.230 as contraband and dispose of it at the court's discretion. [1985 c 430 § 3.]

Severability—1985 c 430: See note following RCW 9A.56.220.

9A.56.250 Civil cause of action. (1) In addition to the criminal penalties provided in RCW 9A.56.220 and 9A.56.230, there is created a civil cause of action for theft of cable television services and for unlawful sale of cable television services.

(2) The prevailing party may recover actual damages, reasonable attorneys' fees, and costs.

(3) The superior court may grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain violations of RCW 9A.56.220 and 9A.56.230. [1985 c 430 § 4.]

Severability—1985 c 430: See note following RCW 9A.56.220.

9A.56.260 Connection of channel converter. No person may be charged with theft under RCW 9A.56.220 or subject to a civil cause of action under RCW 9A.56.250 for connecting a nondecoding or nondescrambling channel frequency converter, which includes cable-ready television sets, video recorders, or similar equipment, to a cable system. [1985 c 430 § 5.]

Severability—1985 c 430: See note following RCW 9A.56.220.

9A.56.270 Shopping cart theft. (1) It is unlawful to do any of the following acts, if a shopping cart has a permanently affixed sign as provided in subsection (2) of this section:

(a) To remove a shopping cart from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart; or

(b) To be in possession of any shopping cart that has been removed from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart.

(2) This section shall apply only when a shopping cart: (a) Has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; (b) notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; (c) notifies the public that the unauthorized removal of the

cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is unlawful; and (d) lists a telephone number or address for returning carts removed from the premises or parking area to the owner or retailer.

(3) Any person who violates any provision of this section is guilty of a misdemeanor. [1985 c 382 § 2.]

Severability—1985 c 382: See note following RCW 9A.56.010.

Chapter 9A.60

FRAUD

Sections

- 9A.60.010 Definitions.
- 9A.60.020 Forgery.
- 9A.60.030 Obtaining a signature by deception or duress.
- 9A.60.040 Criminal impersonation.
- 9A.60.050 False certification.

False representations: Chapter 9.38 RCW.

Frauds and swindles: Chapter 9.45 RCW.

9A.60.010 Definitions. The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

(1) "Written instrument" means: (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or (b) any access device, as defined in RCW 9A.56.010(3), token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification;

(2) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;

(4) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof;

(5) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;

(6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;

(7) "Forged instrument" means a written instrument which has been falsely made, completed or altered. [1987 c 140 § 5; 1975-'76 2nd ex.s. c 38 § 12; 1975 1st ex.s. c 260 § 9A.60.010.]

Effective date—**Severability**—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.60.020 Forgery. (1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He falsely makes, completes, or alters a written instrument or;

(b) He possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged.

(2) Forgery is a class C felony. [1975-'76 2nd ex.s. c 38 § 13; 1975 1st ex.s. c 260 § 9A.60.020.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.60.030 Obtaining a signature by deception or duress. (1) A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he causes another person to sign or execute a written instrument.

(2) Obtaining a signature by deception or duress is a class C felony. [1975-'76 2nd ex.s. c 38 § 14; 1975 1st ex.s. c 260 § 9A.60.030.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.60.040 Criminal impersonation. (1) A person is guilty of criminal impersonation if he:

(a) Assumes a false identity and does an act in his assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a public servant and does an act in his pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.60.040.]

9A.60.050 False certification. (1) A person is guilty of false certification, if, being an officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, he knowingly certifies falsely that the execution of such instrument was acknowledged by any party thereto or that the execution thereof was proved.

(2) False certification is a gross misdemeanor. [1975-'76 2nd ex.s. c 38 § 15; 1975 1st ex.s. c 260 § 9A.60.050.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Chapter 9A.64 FAMILY OFFENSES

Sections

9A.64.010	Bigamy.
9A.64.020	Incest.
9A.64.030	Child selling—Child buying.

9A.64.010 Bigamy. (1) A person is guilty of bigamy if he intentionally marries or purports to marry another person when either person has a living spouse.

(2) In any prosecution under this section, it is a defense that at the time of the subsequent marriage or purported marriage:

(a) The actor reasonably believed that the prior spouse was dead; or

(b) A court had entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor did not know that such judgment was invalid; or

(c) The actor reasonably believed that he was legally eligible to marry.

(3) The limitation imposed by RCW 9A.04.080 on commencing a prosecution for bigamy does not begin to run until the death of the prior or subsequent spouse of the actor or until a court enters a judgment terminating or annulling the prior or subsequent marriage.

(4) Bigamy is a class C felony. [1986 c 257 § 14; 1975 1st ex.s. c 260 § 9A.64.010.]

Severability—1986 c 257: See note following RCW 9A.56.010.

9A.64.020 Incest. (1) A person is guilty of incest in the first degree if he engages in sexual intercourse with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(2) A person is guilty of incest in the second degree if he engages in sexual contact with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(3) As used in this section, "descendant" includes stepchildren and adopted children under eighteen years of age.

(4) As used in this section, "sexual contact" has the same meaning as in RCW 9A.44.100(2).

(5) As used in this section, "sexual intercourse" has the same meaning as in RCW 9A.44.010(1).

(6) Incest in the first degree is a class B felony.

(7) Incest in the second degree is a class C felony. [1985 c 53 § 1; 1982 c 129 § 3; 1975 1st ex.s. c 260 § 9A.64.020.]

Severability—1982 c 129: See note following RCW 9A.04.080.

9A.64.030 Child selling—Child buying. (1) It is unlawful for any person to sell or purchase a minor child.

(2) A transaction shall not be a purchase or sale under subsection (1) of this section if any of the following exists:

(a) The transaction is between the parents of the minor child; or

(b) The transaction is between a person receiving or to receive the child and an agency recognized under RCW 26.33.020; or

(c) The transaction is between the person receiving or to receive the child and a state agency or other governmental agency; or

(d) The transaction is pursuant to chapter 26.34 RCW; or

(e) The transaction is pursuant to court order; or

(f) The only consideration paid by the person receiving or to receive the child is intended to pay for the prenatal hospital or medical expenses involved in the birth of the child, or attorneys' fees and court costs involved in effectuating transfer of child custody.

(3) Child selling is a class C felony and child buying is a class C felony. [1985 c 7 § 3; 1980 c 85 § 3.]

Severability—1980 c 85: "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." [1980 c 85 § 5.]

Chapter 9A.68

BRIBERY AND CORRUPT INFLUENCE

Sections

9A.68.010	Bribery.
9A.68.020	Requesting unlawful compensation.
9A.68.030	Receiving or granting unlawful compensation.
9A.68.040	Trading in public office.
9A.68.050	Trading in special influence.

Bribery or corruption offender as witness: RCW 9.18.080.

9A.68.010 Bribery. (1) A person is guilty of bribery if:

(a) With the intent to secure a particular result in a particular matter involving the exercise of the public servant's vote, opinion, judgment, exercise of discretion, or other action in his official capacity, he offers, confers, or agrees to confer any pecuniary benefit upon such public servant; or

(b) Being a public servant, he requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as a public servant will be used to secure or attempt to secure a particular result in a particular matter.

(2) It is no defense to a prosecution under this section that the public servant sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class B felony. [1975 1st ex.s. c 260 § 9A.68.010.]

9A.68.020 Requesting unlawful compensation. (1) A public servant is guilty of requesting unlawful compensation if he requests a pecuniary benefit for the performance of an official action knowing that he is required to perform that action without compensation or at a level of compensation lower than that requested.

(2) Requesting unlawful compensation is a class C felony. [1975 1st ex.s. c 260 § 9A.68.020.]

9A.68.030 Receiving or granting unlawful compensation. (1) A person is guilty of receiving or granting unlawful compensation if:

(a) Being a public servant, he requests, accepts, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction

regarding which he knows he is likely to have an official discretion to exercise; or

(b) He knowingly offers, pays, or agrees to pay compensation to a public servant for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction regarding which the public servant is likely to have an official discretion to exercise.

(2) Receiving or granting unlawful compensation is a class C felony. [1975 1st ex.s. c 260 § 9A.68.030.]

9A.68.040 Trading in public office. (1) A person is guilty of trading in public office if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon a public servant pursuant to an agreement or understanding that such actor will or may be appointed to a public office; or

(b) Being a public servant, he requests, accepts, or agrees to accept any pecuniary benefit from another person pursuant to an agreement or understanding that such person will or may be appointed to a public office.

(2) Trading in public office is a class C felony. [1975 1st ex.s. c 260 § 9A.68.040.]

9A.68.050 Trading in special influence. (1) A person is guilty of trading in special influence if:

(a) He offers, confers, or agrees to confer any pecuniary benefit upon another person pursuant to an agreement or understanding that such other person will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter; or

(b) He requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter.

(2) Trading in special influence is a class C felony. [1975 1st ex.s. c 260 § 9A.68.050.]

Chapter 9A.72

PERJURY AND INTERFERENCE WITH OFFICIAL PROCEEDINGS

Sections

9A.72.010	Definitions.
9A.72.020	Perjury in the first degree.
9A.72.030	Perjury in the second degree.
9A.72.040	False swearing.
9A.72.050	Perjury and false swearing—Inconsistent statements—Degree of crime.
9A.72.060	Perjury and false swearing—Retraction.
9A.72.070	Perjury and false swearing—Irregularities no defense.
9A.72.080	Statement of what one does not know to be true.
9A.72.085	Matters in official proceeding required to be supported, etc., by sworn statement, etc., may be supported etc., by unsworn written statement, etc.—Requirements of unsworn statement, form.
9A.72.090	Bribing a witness.
9A.72.100	Bribe receiving by a witness.
9A.72.110	Intimidating a witness.
9A.72.120	Tampering with a witness.
9A.72.130	Intimidating a juror.
9A.72.140	Jury tampering.

9A.72.150 Tampering with physical evidence.
 9A.72.160 Intimidating a judge.

Committal of witness committing perjury: RCW 9.72.090.

9A.72.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Materially false statement" means any false statement oral or written, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a false statement is material shall be determined by the court as a matter of law;

(2) "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated; in this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable;

(b) The statement recites that it was made under oath, the declarant was aware of such recitation at the time he made the statement, intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto; or

(c) It is a statement, declaration, verification, or certificate, made within or outside the state of Washington, which is certified or declared to be true under penalty of perjury as provided in RCW 9A.72.085.

(3) An oath is "required or authorized by law" when the use of the oath is specifically provided for by statute or regulatory provision;

(4) "Official proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions;

(5) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury; the term juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(6) "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding. [1981 c 187 § 1; 1975 1st ex.s. c 260 § 9A.72.010.]

9A.72.020 Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his statement was not material is not a defense to a prosecution under this section.

(3) Perjury in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.72.020.]

9A.72.030 Perjury in the second degree. (1) A person is guilty of perjury in the second degree if, with intent to mislead a public servant in the performance of his duty, he makes a materially false statement, which he knows to be false under an oath required or authorized by law.

(2) Perjury in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.72.030.]

9A.72.040 False swearing. (1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law.

(2) False swearing is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.72.040.]

9A.72.050 Perjury and false swearing—Inconsistent statements—Degree of crime. (1) Where, in the course of one or more official proceedings, a person makes inconsistent material statements under oath, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the defendant to be false. In such case it shall not be necessary for the prosecution to prove which material statement was false but only that one or the other was false and known by the defendant to be false.

(2) The highest offense of which a person may be convicted in such an instance as set forth in subsection (1) of this section shall be determined by hypothetically assuming each statement to be false. If perjury of different degrees would be established by the making of the two statements, the person may only be convicted of the lesser degree. If perjury or false swearing would be established by the making of the two statements, the person may only be convicted of false swearing. For purposes of this section, no corroboration shall be required of either inconsistent statement. [1975 1st ex.s. c 260 § 9A.72.050.]

9A.72.060 Perjury and false swearing—Retraction. No person shall be convicted of perjury or false swearing if he retracts his false statement in the course of the same proceeding in which it was made, if in fact he does so before it becomes manifest that the falsification is or will be exposed and before the falsification substantially affects the proceeding. Statements made in separate hearings at separate stages of the same trial, administrative, or other official proceeding shall be treated as if made in the course of the same proceeding. [1975-'76 2nd ex.s. c 38 § 16; 1975 1st ex.s. c 260 § 9A.72.060.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

9A.72.070 Perjury and false swearing—Irregularities no defense. It is no defense to a prosecution for perjury or false swearing:

(1) That the oath was administered or taken in an irregular manner; or

(2) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law. [1975 1st ex.s. c 260 § 9A.72.070.]

9A.72.080 Statement of what one does not know to be true. Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false. [1975 1st ex.s. c 260 § 9A.72.080.]

9A.72.085 Matters in official proceeding required to be supported, etc., by sworn statement, etc., may be supported etc., by unsworn written statement, etc.—Requirements of unsworn statement, form. Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter in an official proceeding is required or permitted to be supported, evidenced, established, or proved by a person's sworn written statement, declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved in the official proceeding by an unsworn written statement, declaration, verification, or certificate, which:

(1) Recites that it is certified or declared by the person to be true under penalty of perjury;

(2) Is subscribed by the person;

(3) States the date and place of its execution; and

(4) States that it is so certified or declared under the laws of the state of Washington.

The certification or declaration may be in substantially the following form:

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":

(Date and Place)

(Signature)

This section does not apply to writings requiring an acknowledgement, depositions, oaths of office, or oaths required to be taken before a special official other than a notary public. [1981 c 187 § 3.]

9A.72.090 Bribing a witness. (1) A person is guilty of bribing a witness if he offers, confers, or agrees to confer any benefit upon a witness or a person he has reason to believe is about to be called as a witness in any official proceeding or upon a person whom he has reason to believe may have information relevant to a criminal investigation, with intent to:

(a) Influence the testimony of that person; or

(b) Induce that person to avoid legal process summoning him to testify; or

(c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) Bribing a witness is a class B felony. [1982 1st ex.s. c 47 § 16; 1975 1st ex.s. c 260 § 9A.72.090.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

(1987 Ed.)

9A.72.100 Bribe receiving by a witness. (1) A witness or a person who has reason to believe he is about to be called as a witness in any official proceeding or that he may have information relevant to a criminal investigation is guilty of bribe receiving by a witness if he requests, accepts, or agrees to accept any benefit pursuant to an agreement or understanding that:

(a) His testimony will thereby be influenced; or

(b) He will attempt to avoid legal process summoning him to testify; or

(c) He will attempt to absent himself from an official proceeding to which he has been legally summoned.

(2) Bribe receiving by a witness is a class B felony. [1982 1st ex.s. c 47 § 17; 1975 1st ex.s. c 260 § 9A.72.100.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.72.110 Intimidating a witness. (1) A person is guilty of intimidating a witness if a person directs a threat to a former witness because of the witness' testimony in any official proceeding, or if, by use of a threat directed to a current witness or a person he has reason to believe is about to be called as a witness in any official proceeding or to a person whom he has reason to believe may have information relevant to a criminal investigation, he attempts to:

(a) Influence the testimony of that person; or

(b) Induce that person to elude legal process summoning him to testify; or

(c) Induce that person to absent himself from such proceedings.

(2) "Threat" as used in this section means

(a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) threats as defined in RCW 9A.04.110(25).

(3) Intimidating a witness is a class B felony. [1985 c 327 § 2; 1982 1st ex.s. c 47 § 18; 1975 1st ex.s. c 260 § 9A.72.110.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.72.120 Tampering with a witness. (1) A person is guilty of tampering with a witness if he attempts to induce a witness or person he has reason to believe is about to be called as a witness in any official proceeding or a person whom he has reason to believe may have information relevant to a criminal investigation to:

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

(b) Absent himself from such proceedings.

(2) Tampering with a witness is a class C felony. [1982 1st ex.s. c 47 § 19; 1975 1st ex.s. c 260 § 9A.72.120.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.72.130 Intimidating a juror. (1) A person is guilty of intimidating a juror if a person directs a threat to a former juror because of the juror's vote, opinion,

decision, or other official action as a juror, or if, by use of a threat, he attempts to influence a juror's vote, opinion, decision, or other official action as a juror.

(2) "Threat" as used in this section means

(a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) threats as defined in RCW 9A.04.110(25).

(3) Intimidating a juror is a class B felony. [1985 c 327 § 3; 1975 1st ex.s. c 260 § 9A.72.130.]

9A.72.140 Jury tampering. (1) A person is guilty of jury tampering if with intent to influence a juror's vote, opinion, decision, or other official action in a case, he attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.

(2) Jury tampering is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.72.140.]

9A.72.150 Tampering with physical evidence. (1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or

(b) Knowingly presents or offers any false physical evidence.

(2) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.72.150.]

9A.72.160 Intimidating a judge. (1) A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in any official proceeding, or if by use of a threat directed to a judge, a person attempts to influence a ruling or decision of the judge in any official proceeding.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in RCW 9A.04.110(25).

(3) Intimidating a judge is a class B felony. [1985 c 327 § 1.]

Chapter 9A.76

OBSTRUCTING GOVERNMENTAL OPERATION

Sections

9A.76.010	Definitions.
9A.76.020	Obstructing a public servant.
9A.76.030	Refusing to summon aid for a peace officer.
9A.76.040	Resisting arrest.
9A.76.050	Rendering criminal assistance—Definition of term.
9A.76.060	Relative defined.
9A.76.070	Rendering criminal assistance in the first degree.

9A.76.080	Rendering criminal assistance in the second degree.
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9A.76.100	Compounding.
9A.76.110	Escape in the first degree.
9A.76.120	Escape in the second degree.
9A.76.130	Escape in the third degree.
9A.76.140	Introducing contraband in the first degree.
9A.76.150	Introducing contraband in the second degree.
9A.76.160	Introducing contraband in the third degree.
9A.76.170	Bail jumping.
9A.76.180	Intimidating a public servant.
9A.76.200	Harming a police dog.

Withholding knowledge of felony: RCW 9.69.100.

9A.76.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Custody" means restraint pursuant to a lawful arrest or an order of a court: *Provided*, That custody pursuant to chapter 13.34 RCW and RCW 74.13.020 and 74.13.031 and chapter 13.32A RCW shall not be deemed custody for purposes of this chapter;

(2) "Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, except an order under chapter 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough, or other such facility or program;

(3) "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court. [1979 c 155 § 35; 1977 ex.s. c 291 § 53; 1975 1st ex.s. c 260 § 9A.76.010.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

9A.76.020 Obstructing a public servant. Every person who, (1) without lawful excuse shall refuse or knowingly fail to make or furnish any statement, report, or information lawfully required of him by a public servant, or (2) in any such statement or report shall make any knowingly untrue statement to a public servant, or (3) shall knowingly hinder, delay, or obstruct any public servant in the discharge of his official powers or duties; shall be guilty of a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.020.]

9A.76.030 Refusing to summon aid for a peace officer. (1) A person is guilty of refusing to summon aid for a peace officer if, upon request by a person he knows to be a peace officer, he unreasonably refuses or fails to summon aid for such peace officer.

(2) Refusing to summon aid for a peace officer is a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.030.]

9A.76.040 Resisting arrest. (1) A person is guilty of resisting arrest if he intentionally prevents or attempts to prevent a peace officer from lawfully arresting him.

(2) Resisting arrest is a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.040.]

9A.76.050 Rendering criminal assistance—Definition of term. As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he:

- (1) Harbors or conceals such person; or
- (2) Warns such person of impending discovery or apprehension; or
- (3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or
- (4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or
- (5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or
- (6) Provides such person with a weapon. [1982 1st ex.s. c 47 § 20; 1975 1st ex.s. c 260 § 9A.76.050.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.76.060 Relative defined. As used in RCW 9A.76.070 and 9A.76.080, "relative" means a person:

- (1) Who is related as husband or wife, brother or sister, parent or grandparent, child or grandchild, step-child or step-parent to the person to whom criminal assistance is rendered; and
- (2) Who does not render criminal assistance to another person in one or more of the means defined in subsections (4), (5), or (6) of RCW 9A.76.050. [1975 1st ex.s. c 260 § 9A.76.060.]

9A.76.070 Rendering criminal assistance in the first degree. (1) A person is guilty of rendering criminal assistance in the first degree if he renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense.

(2) Rendering criminal assistance in the first degree is:

- (a) A gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060;
- (b) A class C felony in all other cases. [1982 1st ex.s. c 47 § 21; 1975 1st ex.s. c 260 § 9A.76.070.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.76.080 Rendering criminal assistance in the second degree. (1) A person is guilty of rendering criminal assistance in the second degree if he renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent

juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2) Rendering criminal assistance in the second degree is:

(a) A misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060;

(b) A gross misdemeanor in all other cases. [1982 1st ex.s. c 47 § 22; 1975 1st ex.s. c 260 § 9A.76.080.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9A.76.090 Rendering criminal assistance in the third degree. (1) A person is guilty of rendering criminal assistance in the third degree if he renders criminal assistance to a person who has committed a gross misdemeanor or misdemeanor.

(2) Rendering criminal assistance in the third degree is a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.090.]

9A.76.100 Compounding. (1) A person is guilty of compounding if:

(a) He requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he will refrain from initiating a prosecution for a crime; or

(b) He confers, or offers or agrees to confer, any pecuniary benefit upon another pursuant to an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

(2) In any prosecution under this section, it is a defense if established by a preponderance of the evidence that the pecuniary benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

(3) Compounding is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.76.100.]

9A.76.110 Escape in the first degree. (1) A person is guilty of escape in the first degree if, being detained pursuant to a conviction of a felony or an equivalent juvenile offense, he escapes from custody or a detention facility.

(2) Escape in the first degree is a class B felony. [1982 1st ex.s. c 47 § 23; 1975 1st ex.s. c 260 § 9A.76.110.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Term of escaped prisoner recaptured: RCW 9.31.090.

9A.76.120 Escape in the second degree. (1) A person is guilty of escape in the second degree if:

(a) He escapes from a detention facility; or

(b) Having been charged with a felony or an equivalent juvenile offense, he escapes from custody.

(2) Escape in the second degree is a class C felony. [1982 1st ex.s. c 47 § 24; 1975 1st ex.s. c 260 § 9A.76.120.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

Term of escaped prisoner recaptured: RCW 9.31.090.

9A.76.130 Escape in the third degree. (1) A person is guilty of escape in the third degree if he escapes from custody.

(2) Escape in the third degree is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.76.130.]

Term of escaped prisoner recaptured: RCW 9.31.090.

9A.76.140 Introducing contraband in the first degree. (1) A person is guilty of introducing contraband in the first degree if he knowingly provides any deadly weapon to any person confined in a detention facility.

(2) Introducing contraband in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.76.140.]

9A.76.150 Introducing contraband in the second degree. (1) A person is guilty of introducing contraband in the second degree if he knowingly and unlawfully provides contraband to any person confined in a detention facility with the intent that such contraband be of assistance in an escape or in the commission of a crime.

(2) Introducing contraband in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.76.150.]

9A.76.160 Introducing contraband in the third degree. (1) A person is guilty of introducing contraband in the third degree if he knowingly and unlawfully provides contraband to any person confined in a detention facility.

(2) Introducing contraband in the third degree is a misdemeanor. [1975 1st ex.s. c 260 § 9A.76.160.]

9A.76.170 Bail jumping. (1) Any person having been released by court order or admitted to bail with the requirement of a subsequent personal appearance before any court of this state, and who knowingly fails to appear as required is guilty of bail jumping.

(2) Bail jumping is:

(a) A class A felony if the person was held for, charged with, or convicted of murder in the first degree;

(b) A class B felony if the person was held for, charged with, or convicted of a class A felony other than murder in the first degree;

(c) A class C felony if the person was held for, charged with, or convicted of a class B or class C felony;

(d) A misdemeanor if the person was held for, charged with, or convicted of a gross misdemeanor or misdemeanor. [1983 1st ex.s. c 4 § 3; 1975 1st ex.s. c 260 § 9A.76.170.]

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

9A.76.180 Intimidating a public servant. (1) A person is guilty of intimidating a public servant if, by use of a threat, he attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.

(2) For purposes of this section "public servant" shall not include jurors.

(3) "Threat" as used in this section means

(a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) threats as defined in RCW 9A.04.110(25).

(4) Intimidating a public servant is a class B felony. [1975 1st ex.s. c 260 § 9A.76.180.]

9A.76.200 Harming a police dog. (1) A person is guilty of harming a police dog if he wilfully injures, disables, shoots, or kills by any means any dog used by a peace officer in discharging or attempting to discharge any legal duty or power of his office.

(2) Harming a police dog is a class C felony. [1982 c 22 § 2.]

Chapter 9A.80 ABUSE OF OFFICE

Sections

9A.80.010 Official misconduct.

9A.80.010 Official misconduct. (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

(a) He intentionally commits an unauthorized act under color of law; or

(b) He intentionally refrains from performing a duty imposed upon him by law.

(2) Official misconduct is a gross misdemeanor. [1975-'76 2nd ex.s. c 38 § 17; 1975 1st ex.s. c 260 § 9A.80.010.]

Effective date—**Severability**—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

Failure of duty by public officers: RCW 42.20.100.

Chapter 9A.82 CRIMINAL PROFITEERING ACT (Formerly: Racketeering)

Sections

9A.82.001 Short title.
9A.82.010 Definitions.
9A.82.020 Extortionate extension of credit.
9A.82.030 Advancing money or property to be used for extortionate credit.
9A.82.040 Use of extortionate means to collect extensions of credit.
9A.82.045 Collection of unlawful debt.
9A.82.050 Trafficking in stolen property.
9A.82.060 Leading organized crime.
9A.82.070 Influencing outcome of sporting event.
9A.82.080 Use of proceeds of criminal profiteering—Controlling enterprise or realty—Conspiracy or attempt.
9A.82.085 Bars on certain prosecutions.
9A.82.090 Orders restraining criminal profiteering—When issued.
9A.82.100 Remedies and procedures.
9A.82.110 State public safety and education account—County antiprofitteering revolving funds.
9A.82.120 Criminal profiteering lien—Authority, procedures.
9A.82.130 Criminal profiteering lien—Trustee of real property.
9A.82.140 Criminal profiteering lien—Procedures after notice.

9A.82.150	Criminal profiteering lien—Conveyance of property by trustee, liability.
9A.82.160	Criminal profiteering lien—Trustee's failure to comply, evasion of procedures or lien.
9A.82.170	Financial institution records—Inspection and copying—Wrongful disclosure.
9A.82.900	Severability—1984 c 270.
9A.82.901	Effective date—1984 c 270 as amended by 1985 c 455.
9A.82.902	Effective date—1985 c 455.
9A.82.903	Repealed acts—Effective July 1, 1995.
9A.82.904	Severability—1985 c 455.

9A.82.001 Short title. This chapter shall be known as the criminal profiteering act. [1985 c 455 § 1.]

9A.82.010 Definitions. Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(2) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(3) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(4) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(5) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(6) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(7) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(8) "Dealer in property" means a person who buys and sells property as a business.

(9) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(10) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(11) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(12) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(13) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(14) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and 9A.56.080;

(f) Child selling or child buying, as defined in RCW 9A.64.030;

(g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

(h) Gambling, as defined in RCW 9A.46.220 and 9A.46.230;

(i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

(j) Extortionate extension of credit, as defined in RCW 9A.82.020;

(k) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

(l) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

(m) Collection of an unlawful debt, as defined in RCW 9A.82.045;

(n) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

(o) Trafficking in stolen property, as defined in RCW 9A.82.050;

(p) Leading organized crime, as defined in RCW 9A.82.060;

(q) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

(r) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

(s) Promoting pornography, as defined in RCW 9.68.140;

(t) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

(u) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

(v) Arson, as defined in RCW 9A.48.020 and 9A.48.030; or

(w) Assault, as defined in *RCW 9A.36.010 and 9A.36.020.

(15) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(16) "Records" means any book, paper, writing, record, computer program, or other material.

(17) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(18) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

(19)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest shall be considered to be located where the real property owned by the trustee is located.

(20) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(21) (a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under subsection(21)(a)(i) or (ii) of this section.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust. [1986 c 78 § 1; 1985 c 455 § 2; 1984 c 270 § 1.]

*Reviser's note: RCW 9A.36.010 and 9A.36.020 were repealed by 1986 c 257 § 9, effective July 1, 1987. Later enactment, see RCW 9A.36.011 and 9A.36.021, respectively.

9A.82.020 Extortionate extension of credit. (1) A person who knowingly makes an extortionate extension of credit is guilty of a class B felony.

(2) In a prosecution under this section, if it is shown that all of the following factors are present in connection with the extension of credit, there is prima facie evidence that the extension of credit was extortionate:

(a) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable at the time the extension of credit was made through civil judicial processes against the debtor in the county in which the debtor, if a natural person, resided or in every county in which the debtor, if other than a natural person, was incorporated or qualified to do business.

(b) The extension of credit was made at a rate of interest in excess of an annual rate of forty-five percent calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(c) The creditor intended the debtor to believe that failure to comply with the terms of the extension of credit would be enforced by extortionate means.

(d) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded one hundred dollars. [1985 c 455 § 3; 1984 c 270 § 2.]

9A.82.030 Advancing money or property to be used for extortionate credit. A person who advances money or property, whether as a gift, loan, investment, or pursuant to a partnership or profit-sharing agreement or otherwise, to any person, with the knowledge that it is the intention of that person to use the money or property so advanced, directly or indirectly, for the purpose of making extortionate extensions of credit, is guilty of a class B felony. [1985 c 455 § 4; 1984 c 270 § 3.]

9A.82.040 Use of extortionate means to collect extensions of credit. A person who knowingly participates in any way in the use of any extortionate means to collect or attempt to collect any extensions of credit or to punish any person for the nonrepayment thereof, is guilty of a class B felony. [1985 c 455 § 5; 1984 c 270 § 4.]

9A.82.045 Collection of unlawful debt. It is unlawful for any person knowingly to collect any unlawful debt. A violation of this section is a class C felony. [1985 c 455 § 6.]

9A.82.050 Trafficking in stolen property. (1) A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.

(2) A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.

(3) Trafficking in stolen property in the second degree is a class C felony. Trafficking in stolen property in the first degree is a class B felony. [1984 c 270 § 5.]

9A.82.060 Leading organized crime. (1) A person commits the offense of leading organized crime by:

(a) Intentionally organizing, managing, directing, supervising, or financing any three or more persons with the intent to engage in a pattern of criminal profiteering activity; or

(b) Intentionally inciting or inducing others to engage in violence or intimidation with the intent to further or promote the accomplishment of a pattern of criminal profiteering activity.

(2) Leading organized crime as defined in subsection (1)(a) of this section is a class A felony, and as defined in subsection (1)(b) of this section is a class B felony. [1985 c 455 § 7; 1984 c 270 § 6.]

9A.82.070 Influencing outcome of sporting event. Whoever knowingly gives, promises, or offers to any professional or amateur baseball, football, hockey, polo,

tennis, horse race, or basketball player or boxer or any player or referee or other official who participates or expects to participate in any professional or amateur game or sport, or to any manager, coach, or trainer of any team or participant or prospective participant in any such game, contest, or sport, any benefit with intent to influence the person to lose or try to lose or cause to be lost or to limit the person's or person's team's margin of victory or defeat, or in the case of a referee or other official to affect the decisions or the performance of the official's duties in any way, in a baseball, football, hockey, or basketball game, boxing, tennis, horse race, or polo match, or any professional or amateur sport or game, in which the player or participant or referee or other official is taking part or expects to take part, or has any duty or connection therewith, is guilty of a class C felony. [1984 c 270 § 7.]

9A.82.080 Use of proceeds of criminal profiteering—Controlling enterprise or realty—Conspiracy or attempt. (1) It is unlawful for a person who has knowingly received any of the proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.

(3) It is unlawful for a person knowingly to conspire or attempt to violate subsection (1) or (2) of this section.

(4) A violation of subsection (1) or (2) of this section is a class B felony. A violation of subsection (3) of this section is a class C felony. [1985 c 455 § 8; 1984 c 270 § 8.]

9A.82.085 Bars on certain prosecutions. In a criminal prosecution alleging a violation of RCW 9A.82.060 or 9A.82.080, the state is barred from joining any offense other than the offenses alleged to be part of the pattern of criminal profiteering activity. When a defendant has been tried criminally for a violation of RCW 9A.82.060 or 9A.82.080, the state is barred from subsequently charging the defendant with an offense that was alleged to be part of the pattern of criminal profiteering activity for which he or she was tried. [1985 c 455 § 9.]

9A.82.090 Orders restraining criminal profiteering—When issued. During the pendency of any criminal case charging a violation of RCW 9A.82.060 or a violation of RCW 9A.82.080, the superior court may, in addition to its other powers, issue an order pursuant to RCW 9A.82.100 (2) or (3). Upon conviction of a person for a violation of RCW 9A.82.060 or a violation of RCW 9A.82.080, the superior court may, in addition to its other powers of disposition, issue an order pursuant to RCW 9A.82.100. [1985 c 455 § 10; 1984 c 270 § 9.]

9A.82.100 Remedies and procedures. (1) (a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080.

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursuant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080 or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county as appropriate to the state general fund or the antiprofitteering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering then to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or antiprofitteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity and all moneys, negotiable instruments, securities, and other things of value significantly used or intended

to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as *amicus curiae* in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1) (a) and (b)(i) of this section, either party has the right to a jury trial. [1985 c 455 § 11; 1984 c 270 § 10.]

9A.82.110 State public safety and education account—County antiprofitereering revolving funds. (1) Any payments or forfeiture to the state general fund ordered under RCW 9A.82.100 (4) or (5) shall be deposited in the public safety and education account.

(2) In an action brought by the attorney general on behalf of the state under RCW 9A.82.100(1)(b)(i) in which the state prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the public safety and education account.

(3) It is the intent of the legislature that the money deposited in the public safety and education account pursuant to this chapter be appropriated to promote crime victims' compensation.

(4)(a) The county legislative authority may establish an antiprofitereering revolving fund to be administered by the county prosecuting attorney under the conditions and for the purposes provided by this subsection. Disbursements from the fund shall be on authorization of the county prosecuting attorney. No appropriation is required for disbursements.

(b) Any prosecution and investigation costs, including attorney's fees, recovered for the state by the county prosecuting attorney as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of criminal profiteering, whether by final judgment, settlement, or otherwise, shall be deposited, as directed by a court of competent jurisdiction, in the fund established by this subsection. In an action brought by a prosecuting attorney on behalf of the county under RCW 9A.82.100(1)(b)(i) in which the county prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the public safety and education account in the state general fund.

(c) The county legislative authority may prescribe a maximum level of moneys in the antiprofitteering revolving fund. Moneys exceeding the prescribed maximum shall be transferred to the county current expense fund.

(d) The moneys in the fund shall be used by the county prosecuting attorney for the investigation and prosecution of any offense, within the jurisdiction of the county prosecuting attorney, included in the definition of criminal profiteering, including civil enforcement.

(e) If a county has not established an antiprofitteering revolving fund, any payments or forfeitures ordered to the county under this chapter shall be deposited to the county current expense fund. [1985 c 455 § 12; 1984 c 270 § 1.1.]

9A.82.120 Criminal profiteering lien—Authority, procedures. (1) The state, upon filing a criminal action under RCW 9A.82.060 or 9A.82.080 or a civil action under RCW 9A.82.100, may file in accordance with this section a criminal profiteering lien. A filing fee or other charge is not required for filing a criminal profiteering lien.

(2) A criminal profiteering lien shall be signed by the attorney general or the county prosecuting attorney representing the state in the action and shall set forth the following information:

(a) The name of the defendant whose property or other interests are to be subject to the lien;

(b) In the discretion of the attorney general or county prosecuting attorney filing the lien, any aliases or fictitious names of the defendant named in the lien;

(c) If known to the attorney general or county prosecuting attorney filing the lien, the present residence or principal place of business of the person named in the lien;

(d) A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding;

(e) The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed;

(f) A statement that the notice is being filed pursuant to this section;

(g) The amount that the state claims in the action or, with respect to property or other interests that the state has requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited;

(h) If known to the attorney general or county prosecuting attorney filing the lien, a description of property that is subject to forfeiture to the state or property in which the defendant has an interest that is available to satisfy a judgment entered in favor of the state; and

(i) Such other information as the attorney general or county prosecuting attorney filing the lien deems appropriate.

(3) The attorney general or the county prosecuting attorney filing the lien may amend a lien filed under this

section at any time by filing an amended criminal profiteering lien in accordance with this section that identifies the prior lien amended.

(4) The attorney general or the county prosecuting attorney filing the lien shall, as soon as practical after filing a criminal profiteering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a criminal profiteering lien filed in accordance with this section.

(5)(a) A criminal profiteering lien is perfected against interests in personal property in the same manner [as] a security interest in like property pursuant to RCW 62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305, and 62A.9-306 or as otherwise required to perfect a security interest in like property under applicable law. In the case of perfection by filing, the state shall file, in lieu of a financing statement in the form prescribed by RCW 62A.9-402, a notice of lien in substantially the following form:

NOTICE OF LIEN

Pursuant to RCW 9A.82.120, the state of Washington claims a criminal profiteering lien on all real and personal property of:

Name: -----

Address: -----

State of Washington

.....
By (authorized signature)

On receipt of such a notice from the state, a filing officer shall, without payment of filing fee, file and index the notice as if it were a financing statement naming the state as secured party and the defendant as debtor.

(b) A criminal profiteering lien is perfected against interests in real property by filing the lien in the office where a mortgage on the real estate would be filed or recorded. The filing officer shall file and index the criminal profiteering lien, without payment of a filing fee, in the same manner as a mortgage.

(6) The filing of a criminal profiteering lien in accordance with this section creates a lien in favor of the state in:

(a) Any interest of the defendant, in real property situated in the county in which the lien is filed, then maintained, or thereafter acquired in the name of the defendant identified in the lien;

(b) Any interest of the defendant, in personal property situated in this state, then maintained or thereafter acquired in the name of the defendant identified in the lien; and

(c) Any property identified in the lien to the extent of the defendant's interest therein.

(7) The lien created in favor of the state in accordance with this section, when filed or otherwise perfected as provided in subsection (5) of this section, has, with respect to any of the property described in subsection (6) of this section, the same priority determined pursuant to the laws of this state as a mortgage or security interest

given for value (but not a purchase money security interest) and perfected in the same manner with respect to such property; except that any lien perfected pursuant to Title 60 RCW by any person who, in the ordinary course of his business, furnishes labor, services, or materials, or rents, leases, or otherwise supplies equipment, without knowledge of the criminal profiteering lien, is superior to the criminal profiteering lien.

(8) Upon entry of judgment in favor of the state, the state may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to such other notice as is required by law, give at least thirty days' notice of the execution to any person possessing at the time the notice is given, an interest recorded subsequent to the date the state's lien was perfected.

(9) Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:

(a) In the case of real property or a beneficial interest in real property, relates back to the date of filing the criminal profiteering lien or, if no criminal profiteering lien is filed, then to the date of recording of the final judgment or the abstract thereof; or

(b) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a criminal profiteering lien in accordance with this section, whichever is earlier, but if the property was not seized and no criminal profiteering lien was filed then to the date the final judgment was filed with the department of licensing and, if the personal property is an aircraft, with the federal aviation administration.

(10) This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under RCW 9A.82.100 or appropriate to protect the interests of the state or available under other applicable law.

(11) In a civil or criminal action under this chapter, the superior court shall provide for the protection of bona fide interests in property, including community property, subject to liens of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture pursuant to RCW 9A.82.100(4)(f). [1985 c 455 § 13; 1984 c 270 § 12.]

9A.82.130 Criminal profiteering lien—Trustee of real property. (1) A trustee who is personally served in the manner provided for service of legal process with written notice that a lien notice has been recorded or a civil proceeding or criminal proceeding has been instituted under this chapter against any person for whom the trustee holds legal or record title to real property, shall immediately furnish to the attorney general or county prosecuting attorney the following:

(a) The name and address of the person, as known to the trustee;

(b) To the extent known to the trustee, the name and address of all other persons for whose benefit the trustee holds title to the real property; and

(c) If requested by the attorney general or county prosecuting attorney, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the real property.

(2) The recording of a lien notice shall not constitute a lien on the record title to real property owned by a trustee at the time of recording except to the extent that trustee is named in and served with the lien notice as provided in subsection (1) of this section. The attorney general or county prosecuting attorney may bring a civil proceeding in superior court against the trustee to recover from the trustee the amounts set forth in RCW 9A.82.150. In addition to amounts recovered under RCW 9A.82.150, the attorney general or county prosecuting attorney also may recover its investigative costs and attorneys' fees.

(3) The recording of a lien notice does not affect the use to which real property or a beneficial interest owned by the person named in the lien notice may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership except the sale of the property, until a judgment of forfeiture is entered.

(4) This section does not apply to any conveyance by a trustee under a court order unless the court order is entered in an action between the trustee and the beneficiary.

(5) Notwithstanding that a trustee is served with notice as provided in subsection (1) of this section, this section does not apply to a conveyance by a trustee required under the terms of any trust agreement in effect before service of such notice on the trustee. [1985 c 455 § 14; 1984 c 270 § 13.]

9A.82.140 Criminal profiteering lien—Procedures after notice. (1) The term of a lien notice shall be six years from the date the lien notice is recorded. If a renewal lien notice is filed by the attorney general or county prosecuting attorney, the term of the renewal lien notice shall be for six years from the date the renewal lien notice is recorded. The attorney general or county prosecuting attorney is entitled to only one renewal of the lien notice.

(2) The attorney general or county prosecuting attorney filing the lien notice may release in whole or in part any lien notice or may release any specific property or beneficial interest from the lien notice upon such terms and conditions as the attorney general or county prosecuting attorney considers appropriate and shall release any lien upon the dismissal of the action which is the basis of the lien or satisfaction of the judgment of the court in the action or other final disposition of the claim evidenced by the lien. A release of a lien notice executed by the attorney general or county prosecuting attorney shall be recorded in the official records in which the lien notice covering that property was recorded. No charge or fee may be imposed for recording any release of a lien notice.

(3) (a) A person named in the lien notice may move the court in which the civil proceeding giving rise to the lien notice is pending for an order extinguishing the lien notice.

(b) Upon the motion of a person under (a) of this subsection, the court immediately shall enter an order setting a date for hearing, which shall be not less than five nor more than ten days after the motion is filed. The order and a copy of the motion shall be served on the attorney general or county prosecuting attorney within three days after the entry of the court's order. At the hearing, the court shall take evidence on the issue of whether any property or beneficial interest owned by the person is covered by the lien notice or otherwise subject to forfeiture under RCW 9A.82.120. If the person shows by a preponderance of the evidence that the lien notice is not applicable to the person or that any property or beneficial interest owned by the person is not subject to forfeiture under RCW 9A.82.120, the court shall enter a judgment extinguishing the lien notice or releasing the property or beneficial interest from the lien notice.

(c) The court may enter an order releasing from the lien notice any specific real property or beneficial interest if, at the time the lien notice is recorded, there is pending an arms length sale of the real property or beneficial interest in which the parties are under no undue compulsion to sell or buy and are able, willing, and reasonably well informed and the sale is for the fair market value of the real property or beneficial interest and the recording of the lien notice prevents the sale of the property or interest. The proceeds resulting from the sale of the real property or beneficial interest shall be deposited with the court, subject to the further order of the court.

(d) At any time after filing of a lien, the court may release from the lien any property upon application by the defendant and posting of security equal to the value of the property to be released. [1985 c 455 § 15; 1984 c 270 § 14.]

9A.82.150 Criminal profiteering lien—Conveyance of property by trustee, liability. (1) If a trustee conveys title to real property for which, at the time of the conveyance, the trustee has been personally served with notice as provided in RCW 9A.82.130(1) of a lien under this chapter, the trustee shall be liable to the state for the greater of:

(a) The amount of proceeds received by the person named in the lien notice as a result of the conveyance;

(b) The amount of proceeds received by the trustee as a result of the conveyance and distributed by the trustee to the person named in the lien notice; or

(c) The fair market value of the interest of the person named in the lien notice in the real property so conveyed.

(2) If the trustee conveys the real property for which a lien notice has been served on the trustee at the time of the conveyance and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or beneficiary's designee, the trustee's liability shall not exceed the amount of the

proceeds so held so long as the trustee continues to hold the proceeds. [1985 c 455 § 16; 1984 c 270 § 15.]

9A.82.160 Criminal profiteering lien—Trustee's failure to comply, evasion of procedures or lien. A trustee who knowingly fails to comply with RCW 9A.82.130(1) is guilty of a gross misdemeanor. A trustee who conveys title to real property after service of the notice as provided in RCW 9A.82.130(1) with the intent to evade the provisions of RCW 9A.82.100 or 9A.82.120 with respect to such property is guilty of a class C felony. [1985 c 455 § 17; 1984 c 270 § 16.]

9A.82.170 Financial institution records—Inspection and copying—Wrongful disclosure. (1) Upon request of the attorney general or prosecuting attorney, a subpoena for the production of records of a financial institution may be signed and issued by a superior court judge if there is reason to believe that an act of criminal profiteering or a violation of RCW 9A.82.060 or 9A.82.080 has occurred or is occurring and that the records sought will materially aid in the investigation of such activity or appears reasonably calculated to lead to the discovery of information that will do so. The subpoena shall be served on the financial institution as in civil actions. The court may, upon motion timely made and in any event before the time specified for compliance with the subpoena, condition compliance upon advancement by the attorney general or prosecuting attorney of the reasonable costs of producing the records specified in the subpoena.

(2) A response to a subpoena issued under this section is sufficient if a copy or printout, duly authenticated by an officer of the financial institution as a true and correct copy or printout of its records, is provided, unless otherwise provided in the subpoena for good cause shown.

(3) Except as provided in this subsection, a financial institution served with a subpoena under this section shall not disclose to the customer the fact that a subpoena seeking records relating to the customer has been served. A judge of the superior court may order the attorney general, prosecuting attorney, or financial institution to advise the financial institution's customer of the subpoena. Unless ordered to do so by the court, disclosure of the subpoena by the financial institution or any of its employees to the customer is a misdemeanor.

(3) A financial institution shall be reimbursed in an amount set by the court for reasonable costs incurred in providing information pursuant to this section.

(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) Disclosure by the attorney general, county prosecuting attorney, or any peace officer or other person designated by the attorney general or the county prosecuting attorney, of information obtained under this section, except in the proper discharge of official duties, is punishable as a misdemeanor.

(6) Upon filing of any civil or criminal action, the nondisclosure requirements of any subpoena or order

under this section shall terminate, and the attorney general or prosecuting attorney filing the action shall provide to the defendant copies of all subpoenas or other orders issued under this section.

(7) A financial institution shall not be civilly liable for harm resulting from its compliance with the provisions of this chapter. [1985 c 455 § 18; 1984 c 270 § 17.]

9A.82.900 Severability—1984 c 270. 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. [1984 c 270 § 20.]

9A.82.901 Effective date—1984 c 270 as amended by 1985 c 455. Sections 12, 13, 14, 15, and 16, chapter 270, Laws of 1984 as amended by sections 13, 14, 15, 16, and 17 of this 1985 act shall take effect on July 1, 1986, and the remainder of chapter 270, Laws of 1984 shall take effect on July 1, 1985. [1985 c 455 § 20; 1984 c 270 § 21.]

9A.82.902 Effective date—1985 c 455. With the exception of sections 13, 14, 15, 16, and 17 of this act, this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985. [1985 c 455 § 21.]

9A.82.903 Repealed acts—Effective July 1, 1995. The following acts or parts of acts as they now exist or are hereafter amended are each repealed effective July 1, 1995.

(1) Section 1, chapter 270, Laws of 1984, section 2, chapter 455, Laws of 1985 and RCW 9A.82.010;

(2) Section 2, chapter 270, Laws of 1984, section 3, chapter 455, Laws of 1985 and RCW 9A.82.020;

(3) Section 3, chapter 270, Laws of 1984, section 4, chapter 455, Laws of 1985 and RCW 9A.82.030;

(4) Section 4, chapter 270, Laws of 1984, section 5, chapter 455, Laws of 1985 and RCW 9A.82.040;

(5) Section 6, chapter 455, Laws of 1985 and RCW 9A.82.045;

(6) Section 5, chapter 270, Laws of 1984 and RCW 9A.82.050;

(7) Section 6, chapter 270, Laws of 1984, section 7, chapter 455, Laws of 1985 and RCW 9A.82.060;

(8) Section 7, chapter 270, Laws of 1984 and RCW 9A.82.070;

(9) Section 8, chapter 270, Laws of 1984, section 8, chapter 455, Laws of 1985 and RCW 9A.82.080;

(10) Section 9, chapter 455, Laws of 1985 and RCW 9A.82.085;

(11) Section 9, chapter 270, Laws of 1984, section 10, chapter 455, Laws of 1985 and RCW 9A.82.090;

(12) Section 10, chapter 270, Laws of 1984, section 11, chapter 455, Laws of 1985 and RCW 9A.82.100;

(13) Section 11, chapter 270, Laws of 1984, section 12, chapter 455, Laws of 1985 and RCW 9A.82.110;

(14) Section 12, chapter 270, Laws of 1984, section 13, chapter 455, Laws of 1985 and RCW 9A.82.120;

(15) Section 13, chapter 270, Laws of 1984, section 14, chapter 455, Laws of 1985 and RCW 9A.82.130;

(16) Section 14, chapter 270, Laws of 1984, section 15, chapter 455, Laws of 1985 and RCW 9A.82.140;

(17) Section 15, chapter 270, Laws of 1984, section 16, chapter 455, Laws of 1985 and RCW 9A.82.150;

(18) Section 16, chapter 270, Laws of 1984, section 17, chapter 455, Laws of 1985 and RCW 9A.82.160;

(19) Section 17, chapter 270, Laws of 1984, section 18, chapter 455, Laws of 1985 and RCW 9A.82.170;

(20) Section 20, chapter 270, Laws of 1984 and RCW 9A.82.900;

(21) Section 21, chapter 270, Laws of 1984, section 20, chapter 455, Laws of 1985 and RCW 9A.82.901; and

(22) Section 1, chapter 455, Laws of 1985 and RCW 9A.82.001. [1985 c 455 § 22.]

9A.82.904 Severability—1985 c 455. 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. [1985 c 455 § 23.]

Chapter 9A.84

PUBLIC DISTURBANCE

Sections

9A.84.010	Riot.
9A.84.020	Failure to disperse.
9A.84.030	Disorderly conduct.
9A.84.040	False reporting.

9A.84.010 Riot. (1) A person is guilty of the crime of riot if, acting with three or more other persons, he knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

(2) The crime of riot is:

(a) A class C felony, if the actor is armed with a deadly weapon;

(b) A gross misdemeanor in all other cases. [1975 1st ex.s. c 260 § 9A.84.010.]

9A.84.020 Failure to disperse. (1) A person is guilty of failure to disperse if:

(a) He congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and

(b) He refuses or fails to disperse when ordered to do so by a peace officer or other public servant engaged in enforcing or executing the law.

(2) Failure to disperse is a misdemeanor. [1975 1st ex.s. c 260 § 9A.84.020.]

9A.84.030 Disorderly conduct. (1) A person is guilty of disorderly conduct if he:

(a) Uses abusive language and thereby intentionally creates a risk of assault; or

(b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or

(c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority.

(2) Disorderly conduct is a misdemeanor. [1975 1st ex.s. c 260 § 9A.84.030.]

9A.84.040 False reporting. (1) A person is guilty of false reporting if with knowledge that the information reported, conveyed or circulated is false, he initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency knowing that such false report is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm.

(2) False reporting is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.84.040.]

Chapter 9A.88

INDECENT EXPOSURE—PROSTITUTION

(Formerly: Public indecency—Prostitution)

Sections

9A.88.010	Indecent exposure.
9A.88.030	Prostitution.
9A.88.050	Prostitution—Sex of parties immaterial—No defense.
9A.88.060	Promoting prostitution—Definitions.
9A.88.070	Promoting prostitution in the first degree.
9A.88.080	Promoting prostitution in the second degree.
9A.88.090	Permitting prostitution.

Obscenity: Chapter 9.68 RCW.

9A.88.010 Indecent exposure. (1) A person is guilty of indecent exposure if he intentionally makes any open and obscene exposure of his person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm.

(2) Indecent exposure is a misdemeanor unless such person exposes himself to a person under the age of fourteen years in which case indecent exposure is a gross misdemeanor. [1987 c 277 § 1; 1975 1st ex.s. c 260 § 9A.88.010.]

9A.88.030 Prostitution. (1) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) For purposes of this section, "sexual conduct" means "sexual intercourse" as defined in RCW 9A.44.010(1) or "sexual contact" as defined in RCW 9A.44.100(2).

(3) Prostitution is a misdemeanor. [1979 ex.s. c 244 § 15; 1975 1st ex.s. c 260 § 9A.88.030.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

9A.88.050 Prostitution—Sex of parties immaterial—No defense. In any prosecution for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defense that:

(1) Such persons were of the same sex; or

(2) The person who received, agreed to receive, or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was female. [1975 1st ex.s. c 260 § 9A.88.050.]

9A.88.060 Promoting prostitution—Definitions. The following definitions are applicable in RCW 9A.88.070 through 9A.88.090:

(1) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) "Profits from prostitution." A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity. [1975 1st ex.s. c 260 § 9A.88.060.]

9A.88.070 Promoting prostitution in the first degree. (1) A person is guilty of promoting prostitution in the first degree if he knowingly:

(a) Advances prostitution by compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or

(b) Advances or profits from prostitution of a person less than eighteen years old.

(2) Promoting prostitution in the first degree is a class B felony. [1975 1st ex.s. c 260 § 9A.88.070.]

9A.88.080 Promoting prostitution in the second degree. (1) A person is guilty of promoting prostitution in the second degree if he knowingly:

(a) Profits from prostitution; or

(b) Advances prostitution.

(2) Promoting prostitution in the second degree is a class C felony. [1975 1st ex.s. c 260 § 9A.88.080.]

9A.88.090 Permitting prostitution. (1) A person is guilty of permitting prostitution if, having possession or control of premises which he knows are being used for prostitution purposes, he fails without lawful excuse to make reasonable effort to halt or abate such use.

(2) Permitting prostitution is a misdemeanor. [1975 1st ex.s. c 260 § 9A.88.090.]

Chapter 9A.98

LAWS REPEALED

Sections

9A.98.010	Acts or parts of acts repealed.
9A.98.020	Savings clause.

9A.98.010 Acts or parts of acts repealed. See 1975 1st ex.s. c 260 § 9A.92.010.

9A.98.020 Savings clause. The laws repealed by RCW 9A.98.010 are repealed except with respect to rights and duties which matured, penalties which were incurred, and proceedings which were begun before July 1, 1976. [1975 1st ex.s. c 260 § 9A.92.020.]

Title 10

CRIMINAL PROCEDURE

Chapters

- 10.01 General provisions.
- 10.04 District court procedure—Generally.
- 10.05 Deferred prosecution—Courts of limited jurisdiction.
- 10.10 Criminal appeals from district courts.
- 10.13 Proceedings to keep the peace.
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Criminal justice training commission—Education and training boards: Chapter 43.101 RCW.

Criminal rules for superior court: Rules of court: Criminal Rules for Superior Court (CrR).

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Mental illness—Financial responsibility: Chapter 71.02 RCW.

Oaths and mode of administering: State Constitution Art. 1 § 6.

Traffic violations: Chapters 46.63, 46.64 RCW.

Victims of crimes, compensation: Chapter 7.68 RCW.

Chapter 10.01

GENERAL PROVISIONS

Sections

- 10.01.030 Pleadings—Forms abolished.
- 10.01.040 Statutes—Repeal or amendment—Saving clause presumed.
- 10.01.050 Convictions—Necessary before punishment.
- 10.01.060 Conviction—Requisites—Waiver of jury trial.
- 10.01.070 Corporations—Amenable to criminal process—How.
- 10.01.090 Corporations—Judgment against.
- 10.01.100 Corporations—Penalties—Fines in lieu of other punishments.
- 10.01.113 Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals.
- 10.01.120 Pardons—Reprieves—Commutations.
- 10.01.130 Witnesses' fees.
- 10.01.140 Mileage allowance—Jurors—Witnesses.
- 10.01.150 Charges arising from official acts of state officers or employees—Defense by attorney general.
- 10.01.160 Costs—What constitutes—Payment by convicted defendant—Procedure—Remission.
- 10.01.170 Fine or costs—Payment within specified time or installments.
- 10.01.180 Fine or costs—Default in payment—Enforcement procedure—Contempt—Commitment for failure to pay—Collection procedure.
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Chronic alcoholics—Private establishment: Chapter 71.12 RCW.

Double jeopardy: State Constitution Art. 1 § 9.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

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Indians, jurisdiction in criminal and civil causes: Chapter 37.12 RCW.

Lakeland village, Rainier school, superintendent exempt from jury duty: RCW 72.33.100.

Mental illness: Chapter 71.05 RCW.

Psychopathic delinquents, procedures, hospitalization, etc.: Chapter 71.06 RCW.

Public defender: Chapter 36.26 RCW.

Right to

bail: State Constitution Art. 1 § 20.

trial by jury: State Constitution Art. 1 § 21.

Rights of accused persons: State Constitution Art. 1 § 22.

Sexual psychopaths, procedures as to: Chapter 71.06 RCW.

10.01.030 Pleadings—Forms abolished. All the forms of pleading in criminal actions heretofore existing, are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed herein. [Code 1881 § 1002; 1873 p 224 § 185; 1869 p 240 § 180; RRS § 2022.]

10.01.040 Statutes—Repeal or amendment—Saving clause presumed. No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such

repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein. [1901 ex.s. c 6 § 1; RRS § 2006.]

10.01.050 Convictions—Necessary before punishment. No person charged with any offense against the law shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person. [Code 1881 § 770; 1854 p 76 § 6; RRS § 2118.]

10.01.060 Conviction—Requisites—Waiver of jury trial. No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth of the charge in his plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court: *Provided however,* That except in capital cases, where the person informed against or indicted for a crime is represented by counsel, such person may, with the assent of the court, waive trial by jury and submit to trial by the court. [1951 c 52 § 1; 1909 c 249 § 57; 1891 c 28 § 91; Code 1881 § 767; 1873 p 180 § 3; 1869 p 198 § 3; 1859 p 105 § 3; 1854 p 76 § 3; RRS § 2309.]

Self-incriminating testimony: State Constitution Art. 1 § 9.

10.01.070 Corporations—Amenable to criminal process—How. Whenever an indictment or information shall be filed in any superior court against a corporation charging it with the commission of a crime, a summons shall be issued by the clerk of such court, signed by one of the judges thereof, commanding the sheriff forthwith to notify the accused thereof, and commanding it to appear before such court at such time as shall be specified in said summons. Such summons and a copy of the indictment or information shall be at once delivered by such clerk to said sheriff and by the sheriff forthwith served and returned in the manner provided for service of summons upon such corporation in a civil action. Whenever a complaint against a corporation, charging it with the commission of a crime, shall be made before any district or municipal judge, a like summons, signed by such judge, shall be issued, which, together with a copy of said complaint, shall be delivered

to the sheriff at once and by the sheriff forthwith served as herein provided. [1987 c 202 § 147; 1911 c 29 § 1; RRS § 2011-1.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.01.090 Corporations—Judgment against. If the corporation shall be found guilty and a fine imposed, it shall be entered and docketed by the clerk, or district or municipal court as a judgment against the corporation, and it shall be of the same force and effect and be enforced against such corporation in the same manner as a judgment in a civil action. [1987 c 202 § 148; 1911 c 29 § 3; RRS § 2011-3.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.01.100 Corporations—Penalties—Fines in lieu of other punishments. Every corporation guilty of a violation of any law of the state of Washington, where the prescribed penalty is, for any reason, incapable of execution or enforcement against such corporation, shall be punished by a fine of not more than ten thousand dollars, if such offense is a felony; or, by a fine of not more than one thousand dollars if such offense is a gross misdemeanor; or, by a fine of not more than five hundred dollars if such offense is a misdemeanor. [1925 ex.s. c 101 § 1; RRS § 2011-4.]

10.01.113 Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals. See RCW 4.88.330.

10.01.120 Pardons—Reprieves—Commutations. Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life at hard labor; and in all cases in which the governor is authorized to grant pardons or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence or grant a pardon, upon such conditions, and with such restrictions, and under such limitations as he may think proper; and he may issue his warrant to all proper officers to carry into effect such pardon or commutation, which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he may think proper. [Code 1881 § 1136; 1854 p 128 § 174; RRS § 2223.]

Governor's powers: State Constitution Art. 3 §§ 9, 11.

Record of pardons, etc., governor to keep: RCW 43.06.020.

10.01.130 Witnesses' fees. No fees shall be allowed to witnesses in criminal causes unless they shall have reported their attendance at the close of each day's session to the clerk in attendance thereon. [1895 c 10 § 1; RRS § 498, part. FORMER PART OF SECTION: 1895 c 10 § 2; RRS § 498, part, now codified as RCW 10.01.140.]

Rules of court: Cf. CrR 6.12.

Witness fees: Chapters 2.40, 12.16 RCW.

10.01.140 Mileage allowance—Jurors—Witnesses. No allowance of mileage shall be made to a juror or witness who has not verified his claim of mileage under oath before the clerk of the court on which he is in attendance. [1895 c 10 § 2; RRS § 498, part. Formerly RCW 10.01.130, part.]

10.01.150 Charges arising from official acts of state officers or employees—Defense by attorney general. Whenever a state officer or employee is charged with a criminal offense arising out of the performance of an official act which was fully in conformity with established written rules, policies, and guidelines of the state or state agency, the employing agency may request the attorney general to defend the officer or employee. If the agency finds, and the attorney general concurs, that the officer's or employee's conduct was fully in accordance with established written rules, policies, and guidelines of the state or a state agency and the act performed was within the scope of employment, then the request shall be granted and the costs of defense shall be paid by the requesting agency: *Provided, however,* If the agency head is the person charged, then approval must be obtained from both the attorney general and the state auditor. If the court finds that the officer or employee was performing an official act, or was within the scope of employment, and that his actions were in conformity with the established rules, regulations, policies, and guidelines of the state and the state agency, the cost of any monetary fine assessed shall be paid from the tort claims revolving fund. [1975 1st ex.s. c 144 § 1.]

10.01.160 Costs—What constitutes—Payment by convicted defendant—Procedure—Remission. (1) The court may require a convicted defendant to pay costs.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a convicted defendant to pay.

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the

amount due in costs, or modify the method of payment under RCW 10.01.170. [1987 c 363 § 1; 1985 c 389 § 1; 1975-'76 2nd ex.s. c 96 § 1.]

Commitment for failure to pay fine and costs: RCW 10.70.010, 10.82.030.

Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection procedure, commitment for failure to pay, execution against defendant's property: Chapter 10.82 RCW.

10.01.170 Fine or costs—Payment within specified time or installments. When a defendant is sentenced to pay a fine or costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the fine or costs shall be payable forthwith. [1975-'76 2nd ex.s. c 96 § 2.]

Payment of fine and costs in installments: RCW 9.92.070.

10.01.180 Fine or costs—Default in payment—Enforcement procedure—Contempt—Commitment for failure to pay—Collection procedure. (1) When a defendant sentenced to pay a fine or costs defaults in the payment thereof or of any installment, the court on motion of the prosecuting attorney or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or costs, or a specified part thereof, is paid.

(3) When a fine or assessment of costs is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or costs from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

(4) The term of imprisonment for contempt for nonpayment of a fine or costs shall be set forth in the commitment order, and shall not exceed one day for each twenty-five dollars of the fine or costs, thirty days if the fine or assessment of costs was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or costs or the unpaid portion thereof in whole or in part.

(6) A default in the payment of a fine or costs or any installment thereof may be collected by any means

authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or costs shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or costs has actually been collected. [1975-'76 2nd ex.s. c 96 § 3.]

Fine and costs—Collection procedure, commitment for failure to pay, execution against defendant's property: Chapter 10.82 RCW.

10.01.190 Prosecutorial powers of attorney general. In any criminal proceeding instituted or conducted by the attorney general, the attorney general and assistants are deemed to be prosecuting attorneys and have all prosecutorial powers vested in prosecuting attorneys of the state of Washington by statute or court rule. [1981 c 335 § 4.]

Purpose—1981 c 335: See RCW 43.10.230.

Chapter 10.04

DISTRICT COURT PROCEDURE—GENERALLY

Sections

10.04.020	Arrest—Offense committed in view of district judge.
10.04.040	Cash bail in lieu of recognizance.
10.04.050	Jury—If demanded.
10.04.070	Plea of guilty.
10.04.100	Verdict of guilty—Proceedings upon.
10.04.101	Assessment of punishment by courts organized under 1961 justice of the peace act.
10.04.110	Judgment—Entry—Execution—Remittance of district court fees, fines, penalties, and forfeitures.
10.04.120	Stay of execution.
10.04.800	Proposed forms for criminal actions.

Rules of court: See *Criminal Rules for Courts of Limited Jurisdiction (CrRLJ)*.

10.04.020 Arrest—Offense committed in view of district judge. When any offense is committed in view of any district judge, the judge may, by verbal direction to any deputy, or if no deputy is present, to any citizen, cause such deputy or citizen to arrest such offender, and keep such offender in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant. [1987 c 202 § 149; Code 1881 § 1888; Code 1881 § 1889, part; 1873 p 382 § 186; 1854 p 260 § 173; RRS § 1926, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.040 Cash bail in lieu of recognizance. District courts or committing magistrates may accept money as bail from persons charged with bailable offenses, and for the appearance of witnesses in all cases provided by law for the recognizance of witnesses. The amount of such bail or recognizance in each case shall be determined by the court in its discretion, and may from time to time be increased or decreased as circumstances may justify. The money to be received and accounted for in the same manner as provided by law for the superior courts. [1987 c 202 § 150; 1919 c 76 § 1; RRS § 1957 1/2.]

Intent—1987 c 202: See note following RCW 2.04.190.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

10.04.050 Jury—If demanded. In all trials for offenses within the jurisdiction of a district judge, the defendant or the state may demand a jury, which shall consist of six, or a less number, agreed upon by the state and accused, to be impaneled and sworn as in civil cases; or the trial may be by the judge. When the complaint is for a crime or misdemeanor in the exclusive jurisdiction of the superior court, the justice hears the case as a committing magistrate, and no jury shall be allowed. [1987 c 202 § 151; 1891 c 11 § 1; Code 1881 § 1890; 1875 p 51 § 2; 1873 p 382 § 188; 1854 p 260 § 174, part; RRS § 1927.]

Intent—1987 c 202: See note following RCW 2.04.190.

Charging juries: State Constitution Art. 4 § 16.

Convicted persons liable for costs and jury fees: RCW 10.46.190.

Right to trial by jury: State Constitution Art. 1 § 21.

10.04.070 Plea of guilty. The defendant may plead guilty to any offense charged. [Code 1881 § 1892; 1873 p 383 § 190; 1854 p 260 § 174, part; RRS § 1929.]

10.04.100 Verdict of guilty—Proceedings upon. The judge, if the prisoner is found guilty, shall assess the prisoner's punishment; or if, in the judge's opinion, the punishment the judge is authorized to assess is not adequate to the offense, he or she may so find, and in such case the judge shall order such defendant to enter recognizance to appear in the superior court of the county, and shall also recognize the witnesses, and proceed as in proceedings by a committing magistrate. [1987 c 202 § 152; 1891 c 11 § 2; Code 1881 § 1891; 1873 p 382 § 189; 1854 p 260 § 174; RRS § 1928.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.101 Assessment of punishment by courts organized under 1961 justice of the peace act. See RCW 3.66.065.

10.04.110 Judgment—Entry—Execution—Remittance of district court fees, fines, penalties, and forfeitures. In all cases of conviction, unless otherwise provided in this chapter, the judge shall enter judgment for the fine and costs against the defendant, and may commit him to jail until the amount of such fine and costs owing are paid, or the payment thereof be secured as provided by RCW 10.04.120. The amount of such fine and costs owing shall be computed as provided for superior court cases in RCW 10.82.030 and 10.82.040. Further proceedings therein shall be had as in like cases in the superior court: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 153; 1969 ex.s. c 199 § 10; 1967 c 200 § 6; 1891 c 11 § 6; Code 1881 § 1896; 1873 p 383 § 194; 1854 p 261 § 176; RRS § 1933.]

Intent—1987 c 202: See note following RCW 2.04.190.
Convicted persons liable for jury fees: RCW 10.46.190.

10.04.120 Stay of execution. Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties, to be approved by the district judge, to enter into recognizance before the district judge for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the district judge, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the district judge shall proceed as in like cases in the superior court. [1987 c 202 § 154; Code 1881 § 1897; 1873 p 383 § 195; 1854 p 261 § 176; RRS § 1934.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.04.800 Proposed forms for criminal actions. The magistrates' association may propose to the supreme court suggested forms for criminal actions for inclusion in the justice court criminal rules. [1987 c 202 § 155.]

Rules of Court: CrRLJ 2.1, 4.2.

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 10.05
DEFERRED PROSECUTION—COURTS OF
LIMITED JURISDICTION

Sections

10.05.010	Eligibility—Time for petition.
10.05.015	Statement of availability.
10.05.020	Requirements of petition—Rights of petitioner— Court findings.
10.05.030	Arraignment continued—Referral to treatment facility.
10.05.040	Investigation and examination by treatment facility.
10.05.050	Report to court by treatment facility—Recommended treatment plan—Commitment to provide treatment.
10.05.060	Docket and abstract procedure upon approval of treat- ment plan.
10.05.070	Petitioner arraigned when treatment rejected.
10.05.080	Evidence, uses and admissibility.
10.05.090	Procedure upon breach of treatment plan.
10.05.100	Conviction of similar offense.
10.05.110	Trial delay not grounds for dismissal.
10.05.120	Dismissal of charges, when—Records removed.
10.05.130	Services provided for indigent defendants.
10.05.140	Conditions of granting deferred prosecution.
10.05.150	Alcoholism program requirements.
10.05.160	Appeal of order granting deferred prosecution.
10.05.170	Supervision as condition of deferred prosecution.

10.05.010 Eligibility—Time for petition. In a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

A person charged with a traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once in any five-year period. Separate offenses committed more than seven days apart may not be consolidated in a single program. [1985 c 352 § 4; 1982 1st ex.s. c 47 § 26; 1975 1st ex.s. c 244 § 1.]

Legislative finding—1985 c 352: "The legislature finds that the deferred prosecution program is an alternative to punishment for persons who will benefit from a treatment program if the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. This alternative to punishment is dependent for success upon appropriate treatment and the willingness and ability of the person receiving treatment to cooperate fully with the treatment program. The legislature finds that some persons have sought deferred prosecution but have been unable or unwilling to cooperate with treatment requirements and escaped punishment because of the difficulties in re-suming prosecution after significant delay due to the absence of witnesses at a later date and the congestion in courts at a later date. The legislature further finds that the deferred prosecution statutes require clarification. The purpose of sections 4 through 19 of this act is to provide specific standards and procedures for judges and prosecutors to use in carrying out the original intent of the deferred prosecution statutes." [1985 c 352 § 3.]

Severability—1985 c 352: "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." [1985 c 352 § 22.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

10.05.015 Statement of availability. At the time of arraignment a person charged with a violation of RCW 46.61.502 or 46.61.504 may be given a statement by the court that explains the availability, operation, and effects of the deferred prosecution program. [1985 c 352 § 5.]

Legislative finding—**Severability**—1985 c 352: See notes following RCW 10.05.010.

10.05.020 Requirements of petition—Rights of petitioner—Court findings. (1) The petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental problems for which the person is in need of treatment and unless treated the probability of future reoccurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved alcoholism treatment facility as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) Before entry of an order deferring prosecution, a petitioner shall be advised of his rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgement of his

rights; (b) a stipulation to the admissibility of the facts contained in the written police report; and (c) an acknowledgement that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he may, if he proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he seek treatment and, further, that he may seek treatment from public and private agencies at any time without regard to whether or not he is found guilty of the offense charged. He shall also be advised that the court will not accept a petition for deferred prosecution from a person who sincerely believes that he is innocent of the charges or sincerely believes that he does not, in fact, suffer from alcoholism, drug addiction, or mental problems.

(3) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing or trial on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; and (c) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution. [1985 c 352 § 6; 1975 1st ex.s. c 244 § 2.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.030 Arraignment continued—Referral to treatment facility. The arraigning judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to an approved alcoholism treatment facility as designated in chapter 70.96A RCW, if the petition alleges an alcohol problem, an approved drug treatment center as designated in chapter 71.24 RCW, if the petition alleges a drug problem, or to an approved mental health center, if the petition alleges a mental problem. [1975 1st ex.s. c 244 § 3.]

Drug treatment centers: Chapter 69.54 RCW.

10.05.040 Investigation and examination by treatment facility. The facility to which such person is referred shall conduct an investigation and examination to determine:

- (1) Whether the person suffers from the problem described;
- (2) Whether the problem is such that if not treated there is a probability that similar misconduct will occur in the future;
- (3) Whether extensive and long term treatment is required;
- (4) Whether effective treatment for the person's problem is available; and

(5) Whether the person is amenable to treatment. [1985 c 352 § 7; 1975 1st ex.s. c 244 § 4.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.050 Report to court by treatment facility—Recommended treatment plan—Commitment to provide treatment. The facility shall make a written report to the court stating its findings and recommendations after the examination required by RCW 10.05.040. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

- (1) The type;
- (2) Nature;
- (3) Length;
- (4) A treatment time schedule; and
- (5) Approximate cost of the treatment.

The report with the treatment plan shall be filed with the court and a copy given to the petitioner and petitioner's counsel. A copy of the treatment plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The evaluation facility making the written report shall append to the report a commitment by the treatment facility that it will provide the treatment in accordance with this chapter. The facility shall agree to provide the court with a statement every three months for the first year and every six months for the second year regarding (a) the petitioner's cooperation with the treatment plan proposed and (b) the petitioner's progress or failure in treatment. These statements shall be made as a declaration by the person who is personally responsible for providing the treatment. [1985 c 352 § 8; 1975 1st ex.s. c 244 § 5.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.060 Docket and abstract procedure upon approval of treatment plan. If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be attached to the docket, which shall then be removed from the regular court dockets and filed in a special court deferred prosecution file. If the charge be one that an abstract of the docket showing the charge and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance for deferred prosecution on the department's driving record of the petitioner. The department shall maintain the record for five years from date of entry of the order granting deferred prosecution. [1985 c 352 § 9; 1979 c 158 § 4; 1975 1st ex.s. c 244 § 6.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.070 Petitioner arraigned when treatment rejected. When treatment is either not recommended or not approved by the judge, or the petitioner declines to accept the treatment plan, the petitioner shall be arraigned on the charge. [1985 c 352 § 10; 1975 1st ex.s. c 244 § 7.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.080 Evidence, uses and admissibility. If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition and/or investigation is inadmissible in any trial on the charges, but shall be available for use after a conviction in determining a sentence. [1985 c 352 § 11; 1975 1st ex.s. c 244 § 8.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.090 Procedure upon breach of treatment plan. If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the petitioner's treatment plan, the facility, center, institution, or agency administering the treatment shall immediately report such breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the petitioner's alleged failure to comply with the treatment plan and the petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the court shall enter judgment pursuant to RCW 10.05.020. [1985 c 352 § 12; 1975 1st ex.s. c 244 § 9.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.100 Conviction of similar offense. If a petitioner is subsequently convicted of a similar offense while in a deferred prosecution program, upon notice the court shall remove the petitioner's docket from the deferred prosecution file and the court shall enter judgment pursuant to RCW 10.05.020. [1985 c 352 § 13; 1975 1st ex.s. c 244 § 10.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.110 Trial delay not grounds for dismissal. Delay in bringing a case to trial caused by a petitioner requesting deferred prosecution as provided for in this chapter shall not be grounds for dismissal. [1985 c 352 § 14; 1975 1st ex.s. c 244 § 11.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.120 Dismissal of charges, when—Records removed. Upon proof of successful completion of the two-year treatment program, the court shall dismiss the charges pending against the petitioner.

Five years from the date of the court's approval of a deferred prosecution program for an individual petitioner, those entries that remain in the department of licensing records relating to such petitioner shall be removed. A deferred prosecution may be considered for enhancement purposes when imposing mandatory penalties and suspensions under RCW 46.61.515 for subsequent offenses within a five-year period. [1985 c 352 § 15; 1983 c 165 § 45; 1975 1st ex.s. c 244 § 12.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

10.05.130 Services provided for indigent defendants. Funds shall be appropriated from the fines and forfeitures of the court to provide investigation, examination, report and treatment plan for any indigent person who is unable to pay the cost of any program of treatment. [1975 1st ex.s. c 244 § 13.]

10.05.140 Conditions of granting deferred prosecution. 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, the court may order the petitioner to make restitution. The court may terminate the deferred prosecution program upon violation of this section. [1985 c 352 § 16.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.150 Alcoholism program requirements. A deferred prosecution program for alcoholism shall be for a two-year period and shall include, but not be limited to, the following requirements:

(1) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;

(2) Participation in an intensive inpatient or intensive outpatient program in a state-approved alcoholism treatment facility;

(3) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;

(4) Participation in an alcoholism self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;

(5) Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;

(6) Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;

(7) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;

(8) All treatment within the purview of this section shall occur within or be approved by a state-approved alcoholism treatment facility as described in chapter 70-.96A RCW;

(9) Signature of the petitioner agreeing to the terms and conditions of the treatment program. [1985 c 352 § 17.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.160 Appeal of order granting deferred prosecution. The prosecutor may appeal an order granting deferred prosecution on any or all of the following grounds:

(1) Prior deferred prosecution has been granted to the defendant within five years;

(2) Failure of the court to obtain proof of insurance or a treatment plan conforming to the requirements of this chapter;

(3) Failure of the court to comply with the requirements of RCW 10.05.100;

(4) Failure of the evaluation facility to provide the information required in RCW 10.05.040 and 10.05.050, if the defendant has been referred to the facility for treatment. If an appeal on such basis is successful, the trial court may consider the use of another treatment facility. [1985 c 352 § 18.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

10.05.170 Supervision as condition of deferred prosecution. As a condition of granting deferred prosecution, the court may order supervision of the petitioner during the period of deferral. In a jurisdiction with a probation department, the court may appoint the probation department to supervise the petitioner. In a jurisdiction without a probation department, the court may appoint an appropriate person or agency to supervise the petitioner. A supervisor appointed under this section shall be required to do at least the following:

(1) If the charge for which deferral is granted relates to operation of a motor vehicle, at least once every six months request from the department of licensing an abstract of the petitioner's driving record; and

(2) At least once every month make contact with the petitioner or with any agency to which the petitioner has been directed for treatment as a part of the deferral. [1985 c 352 § 19.]

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Chapter 10.10

CRIMINAL APPEALS FROM DISTRICT COURTS

Sections

- 10.10.010 Court rules.
10.10.060 Appeal—Costs—Default.

Rules of court: *Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).*

10.10.010 Court rules. Every person convicted before a district judge of any offense may appeal from the judgment as provided by court rules. [1987 c 202 § 156; 1891 c 29 § 6, part; RRS § 1919, part. Prior: Code 1881 § 1898, part; 1877 p 203 § 7, part; 1873 p 384 § 196, part; 1854 p 261 § 177. Formerly RCW 10.10.010, 10-.10.020, and 10.10.030.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.10.060 Appeal—Costs—Default. The appellant in a criminal action shall not be required to advance any fees in claiming his appeal nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his appeal, he may be required as a part of the sentence to pay the costs of the prosecution. If the appellant shall failed to enter and prosecute his appeal he shall be defaulted of his recognizance, if any was taken, and the superior court may award sentence against him for the offense whereof he was convicted in like manner as if he had been convicted thereof in that court; and if he be not then in custody process may be issued to bring him into court to receive sentence. [1891 c 29 § 7; RRS § 1920. Prior: Code 1881 § 1900; 1873 p 384 § 198, part; 1854 p 261 § 179. Formerly RCW 10.10.060 and 10.10.080.]

Chapter 10.13

PROCEEDINGS TO KEEP THE PEACE

Sections

- 10.13.010 Authority of district judges.
10.13.020 Complaint—Justice to reduce to writing.
10.13.030 Arrest of defendant.
10.13.040 Hearing—Witnesses—Testimony reduced to writing.
10.13.050 Discharge of defendant—F frivolous complaints.
10.13.060 Security required—When.
10.13.070 Commitment to jail.
10.13.075 Giving of security—Discharge from jail.
10.13.080 Recognizances filed in superior court.
10.13.090 Forfeiture under recognizance—Remission.
10.13.100 Surrender of principal—Release of surety.
10.13.110 Costs—Taxation—Collection.
10.13.120 Appeal—How taken.
10.13.130 Appeal—Procedure in appellate court.
10.13.140 Appeal—Failure to prosecute.
10.13.150 Recognizances without process—Superior court—Justice court.

Conviction, recognizance to keep peace: RCW 10.64.070.

10.13.010 Authority of district judges. District judges shall have power to cause all laws made for the preservation of the public peace to be kept; and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or

both, in the manner herein provided. [1987 c 202 § 157; Code 1881 § 1903; 1873 p 390 § 201; 1854 p 104 § 11; RRS § 1936.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.13.020 Complaint—Justice to reduce to writing. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offense against the property or person of another, the magistrate shall examine the complaint, and any witness who may be produced on oath, and reduce such complaints to writing, and the same shall be subscribed by the complainant. [Code 1881 § 1904; 1873 p 390 § 202; 1854 p 104 § 12; RRS § 1937.]

10.13.030 Arrest of defendant. If, upon the examination, it shall appear that there is just cause to fear that such offense may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of and bring him before such magistrate or some other magistrate, or court having jurisdiction of the cause. [Code 1881 § 1906; 1873 p 390 § 204; 1854 p 104 § 13; RRS § 1939.]

10.13.040 Hearing—Witnesses—Testimony reduced to writing. It shall be the duty of every magistrate examining a person charged with an offense, or with an intention to commit an offense, to examine all the witnesses he shall deem material, and reduce their testimony to writing, a copy of which, whether the accused is discharged, committed, or held to bail, or shall take an appeal, he shall transmit to the clerk of the court having jurisdiction of the offense. [1891 c 11 § 8; Code 1881 § 1905; 1873 p 390 § 203; RRS § 1938.]

10.13.050 Discharge of defendant—Frivolous complaints. If, upon examination, it shall appear that there is not just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt. [Code 1881 § 1909; 1873 p 391 § 207; 1854 p 104 § 16; RRS § 1942.]

10.13.060 Security required—When. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, hear and examine the complaint. And if it shall appear that there is just cause to fear that any such offense will be committed by the party complained of he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of the state, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognize for his appearance at

the superior court unless he is charged with some offense for which he ought to be held to answer at said court. [Code 1881 § 1907; 1873 p 391 § 205; 1854 p 104 § 14; RRS § 1940.]

Recognizance to keep the peace as incidence of conviction of crime: RCW 10.64.070, 10.64.075.

10.13.070 Commitment to jail. If the person so ordered to recognize, shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment with the sum and time for which security was required. [Code 1881 § 1908; 1873 p 391 § 206; 1854 p 104 § 15; RRS § 1944. FORMER PART OF SECTION: Code 1881 § 1915; 1873 p 392 § 213; 1854 p 105 § 22; RRS § 1944, now codified as RCW 10.13.075.]

10.13.075 Giving of security—Discharge from jail. Any person committed for not finding sureties or refusing to recognize as required by the magistrate, may be discharged by any judge, on giving such security as was required. [1987 c 202 § 158; Code 1881 § 1915; 1873 p 392 § 213; 1854 p 105 § 22; RRS § 1944. Formerly RCW 10.13.070, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.13.080 Recognizances filed in superior court. Every recognizance taken pursuant to the foregoing provisions shall be transmitted to the superior court for the county within ten days, and shall be there filed of record by the clerk. [1891 c 11 § 9; Code 1881 § 1916; 1873 p 392 § 214; 1854 p 105 § 23; RRS § 1945.]

10.13.090 Forfeiture under recognizance—Remission. Whenever upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable. [Code 1881 § 1918; 1873 p 393 § 216; 1854 p 106 § 25; RRS § 1947.]

10.13.100 Surrender of principal—Release of surety. Any surety in recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his or her principal as if he or she had been bail for him or her in a civil cause, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance, and the person so surrendered may recognize anew, with sufficient sureties, before any district judge, for the residue of the term, and thereupon shall be discharged. [1987 c 202 § 159; Code 1881 § 1919; 1873 p 393 § 217; 1854 p 106 § 26; RRS § 1948.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.13.110 Costs—Taxation—Collection. When no order respecting the costs is made by the magistrate,

they shall be allowed and paid in the same manner as costs before district judges in criminal prosecutions; but in all cases where a person is required to give good security for the peace, or for the person's good behavior, the magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or the person is otherwise legally discharged. [1987 c 202 § 160; Code 1881 § 1910; 1873 p 391 § 208; 1854 p 105 § 17; RRS § 1943.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.13.120 Appeal—How taken. An appeal may be taken from the order of a magistrate requiring a person to give security to keep the peace or for good behavior. Such appeal shall be taken in the same manner and subject to the same conditions as appeals from district courts in criminal actions, and the magistrate may require recognizances of the appellant and the witness as in appeals in such criminal actions. [1987 c 202 § 161; 1891 c 29 § 9; RRS § 1922. Prior: Code 1881 §§ 1911, 1912; 1863 p 385 §§ 191, 192; 1854 p 105 §§ 18, 19.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.13.130 Appeal—Procedure in appellate court. The court before which such appeal is prosecuted, may affirm the order of the district judge or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable. [1987 c 202 § 162; Code 1881 § 1913; 1854 p 105 § 20; RRS § 1923.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.13.140 Appeal—Failure to prosecute. If any party appealing from such order of a magistrate shall fail to prosecute his appeal his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmance of the judgment or order of the magistrate, and also shall stand as security for costs which shall be ordered by the court appealed to to be paid by the appellant. [1891 c 29 § 10; Code 1881 § 1914; 1854 p 105 § 21; RRS § 1924.]

10.13.150 Recognizances without process—Superior court—Magistrate. Every person who shall, in the presence of any magistrate, or before any judge of a court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such judge or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or other proof, to recognize for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed. [1891 c 11 § 10; Code 1881 § 1917; 1873 p 392 § 215; 1854 p 105 § 24; RRS § 1946.]

Chapter 10.14 HARASSMENT

Sections

10.14.010	Legislative finding, intent.
10.14.020	Definitions.
10.14.030	Course of conduct—Determination of purpose.
10.14.040	Protection order—Petition.
10.14.050	Administrator for courts—Forms, information.
10.14.060	Proceeding in forma pauperis.
10.14.070	Hearing—Service.
10.14.080	Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal.
10.14.090	Representation or appearance.
10.14.100	Service of order.
10.14.110	Notice to law enforcement agencies—Enforceability.
10.14.120	Disobedience of order—Penalties.
10.14.130	Exclusion of certain actions.
10.14.140	Other remedies.
10.14.150	Jurisdiction.
10.14.160	Where action may be brought.
10.14.170	Criminal penalty.
10.14.180	Modification of order.
10.14.190	Constitutional rights.
10.14.900	Severability—1987 c 280.

10.14.010 Legislative finding, intent. The legislature finds that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing. The legislature further finds that the prevention of such harassment is an important governmental objective. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining civil antiharassment protection orders preventing all further unwanted contact between the victim and the perpetrator. [1987 c 280 § 1.]

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

(1) "Unlawful harassment" means a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys, or harasses 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.

(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. Constitutionally protected activity is not included within the meaning of "course of conduct." [1987 c 280 § 2.]

10.14.030 Course of conduct—Determination of purpose. In determining whether the course of conduct serves any legitimate or lawful purpose, the court should consider whether:

(1) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(2) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(3) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:

- (a) Protect property or liberty interests;
- (b) Enforce the law; or
- (c) Meet specific statutory duties or requirements;

(5) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;

(6) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order. [1987 c 280 § 3.]

10.14.040 Protection order—Petition. There shall exist an action known as a petition for an order for protection in cases of unlawful harassment.

(1) A petition for relief shall allege the existence of harassment and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) All court clerks' offices shall make available simplified forms and instructional brochures. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for a petition filed in an existing action or under an existing cause number brought under this chapter in the jurisdiction where the relief is sought. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section. [1987 c 280 § 4.]

10.14.050 Administrator for courts—Forms, information. The administrator for the courts shall develop and prepare, in consultation with interested persons, model forms and instructional brochures required under RCW 10.14.040(3). [1987 c 280 § 5.]

10.14.060 Proceeding in forma pauperis. Persons seeking relief under this chapter may file an application for leave to proceed in forma pauperis on forms supplied by the court. If the court determines that a petitioner lacks the funds to pay the costs of filing, the petitioner shall be granted leave to proceed in forma pauperis and no filing fee or any other court related fees shall be charged by the court to the petitioner for relief sought under this chapter. If the petitioner is granted leave to proceed in forma pauperis, then no fees for service may be charged to the petitioner. [1987 c 280 § 6.]

10.14.070 Hearing—Service. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Personal service shall be made upon the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date. [1987 c 280 § 7.]

10.14.080 Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal.

(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, but 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. 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.

(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. An order issued under this chapter shall be effective for not more than one year. 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 new petition under this chapter.

(4) 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; and
- (c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace.

(5) 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. [1987 c 280 § 8.]

10.14.090 Representation or appearance. Nothing in this chapter shall preclude either party from representation by private counsel or from appearing on his or her own behalf. [1987 c 280 § 9.]

10.14.100 Service of order. (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsection (5) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner.

(4) Returns of service under this chapter shall be made in accordance with the applicable court rules.

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

(6) Except in cases where the petitioner is granted leave to proceed in forma pauperis, municipal police departments serving documents as required under this chapter may collect the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs. [1987 c 280 § 10.]

10.14.110 Notice to law enforcement agencies—Enforceability. A copy of an antiharassment protection order granted under this chapter shall 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 for one year into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state. [1987 c 280 § 11.]

10.14.120 Disobedience of order—Penalties. Any wilful disobedience by the respondent of any temporary antiharassment protection order or civil antiharassment protection order issued under this chapter shall subject the respondent to criminal penalties under this chapter. Any respondent who wilfully disobeys the terms of any order issued under this chapter may also, in the court's discretion, be found in contempt of court and subject to penalties under chapter 7.20 RCW. [1987 c 280 § 12.]

10.14.130 Exclusion of certain actions. Protection orders authorized under this chapter shall not be issued for any action specifically covered by chapter 10.99 or 26.50 RCW. [1987 c 280 § 13.]

10.14.140 Other remedies. Nothing in this chapter shall preclude a petitioner's right to utilize other existing civil remedies. [1987 c 280 § 14.]

10.14.150 Jurisdiction. The superior courts shall have jurisdiction and cognizance of any civil actions and proceedings brought under this chapter. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170. [1987 c 280 § 15.]

10.14.160 Where action may be brought. For the purposes of this chapter an action may be brought in:

(1) Any county in which the alleged acts of unlawful harassment occurred;

(2) Any county where any respondent resides at the time the petition is filed; or

(3) Any county where a respondent may be served if it is the same county where a respondent resides. [1987 c 280 § 16.]

10.14.170 Criminal penalty. Any respondent who wilfully disobeys any civil antiharassment protection order issued pursuant to this chapter shall be guilty of a gross misdemeanor. [1987 c 280 § 17.]

10.14.180 Modification of order. Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order under this chapter. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified order or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system. [1987 c 280 § 18.]

10.14.190 Constitutional rights. Nothing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and freedom of assembly. [1987 c 280 § 19.]

10.14.900 Severability—1987 c 280. 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. [1987 c 280 § 22.]

Chapter 10.16

PRELIMINARY HEARINGS

Sections

10.16.080	Discharge of defendant—Frivolous complaints.
10.16.100	Abstract of costs forwarded with transcript.
10.16.110	Statement of prosecuting attorney if no information filed—Court action.
10.16.145	Witnesses—Recognizances with sureties.
10.16.150	Recognizances for minors.
10.16.160	Witnesses—Failure to furnish recognizance—Commitment—Deposition—Discharge.

Magistrates: Chapter 2.20 RCW.

Municipal judges as magistrates: RCW 35.20.020, 35.20.250.

10.16.080 Discharge of defendant—F frivolous complaints. If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if in the opinion of the magistrate, the complaint was malicious, or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint. [Code 1881 § 1925; 1873 p 395 § 223; 1854 p 107 § 31; RRS § 1954.]

10.16.100 Abstract of costs forwarded with transcript. In all cases where any magistrate shall order a defendant to recognize for his or her appearance before a district or superior court, the magistrate shall forward with the papers in the case, an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case. [1987 c 202 § 163; Code 1881 § 1937; 1873 p 397 § 236; 1854 p 109 § 44; RRS § 1966.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.16.110 Statement of prosecuting attorney if no information filed—Court action. It shall be the duty of the prosecuting attorney of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination, as provided by law, touching the commission of any offense wherein the offender shall be committed to jail, or become recognized or held to bail; and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he shall make, subscribe and file with the clerk of the court a statement in writing containing his reasons, in fact and in law, for not filing an information in such case, and such statement shall be filed at and during the session of court at which the offender shall be held for his appearance: *Provided*, That in such case such court may examine such statement, together with the evidence filed in the case, and if upon such examination the court shall not be satisfied with such statement, the prosecuting attorney shall be directed by the court to file the proper information and bring the case to trial. [1890 p 102 § 6; RRS § 2053. Formerly RCW 10.16.110 and 10.16.120.]

10.16.145 Witnesses—Recognizances with sureties. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his appearance at court. [Code 1881 § 1930; 1873 p 396 § 229; 1854 p 108 § 37; RRS § 1960. Formerly codified in RCW 10.16.140, part.]

Rules of court: *This section probably superseded by CrR 6.13. See comment after CrR 6.13.*

10.16.150 Recognizances for minors. When any minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or

the magistrate may, in his discretion, take the recognizance of such minor in a sum not exceeding fifty dollars which shall be valid and binding in law, notwithstanding the disability of minority. [1973 1st ex.s. c 154 § 19; Code 1881 § 1931; 1873 p 396 § 230; 1854 p 108 § 38; RRS § 1961.]

Rules of court: *This section probably superseded by CrR 6.13. See comment after CrR 6.13.*

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

10.16.160 Witnesses—Failure to furnish recognizance—Commitment—Deposition—Discharge. All witnesses required to recognize with or without sureties shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such orders or be otherwise discharged according to law: *Provided*, That when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such order, the magistrate shall immediately take the deposition of such witness and discharge the witness from custody upon the witness' own recognizance. The testimony of the witness shall be reduced to writing by a district judge or some competent person under the judge's direction, and only the exact words of the witness shall be taken; the deposition, except the cross-examination, shall be in the narrative form, and upon the cross-examination the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken, and shall have an opportunity to cross-examine the witnesses; the defendant may make any objections to the admission of any part of the testimony, and all objections shall be noted by the district judge; but the district judge shall not decide as to the admissibility of the evidence, but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness, and any corrections the witness may desire to make thereto shall be made in presence of the defendant by adding the same to the deposition as first taken; it must be signed by the witness, certified by the district judge, and transmitted to the clerk of the superior court, in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case, either before the grand jury or upon the trial in the superior court, the deposition shall be submitted to the judge of such superior court, upon the objections noted by the district judge, and such judge shall suppress so much of said deposition as such judge shall find to be inadmissible, and the remainder of the deposition may be read as evidence in the case, either before the grand jury or upon the trial in the court. [1987 c 202 § 164; 1891 c 11 § 15; Code 1881 § 1932; 1877 p 203 § 8; 1873 p 396 § 232; 1854 p 108 § 39; RRS § 1962. Formerly RCW 10.16.160, 10.16.170 and 10.16.180.]

Rules of court: *This section modified if not superseded by CrR 6.13. See comment after CrR 6.13.*

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 10.19

BAIL AND APPEARANCE BONDS

Sections

10.19.040	Officers authorized to take recognizance and approve bail.
10.19.060	Certification and filing of recognizances.
10.19.065	Taking and entering recognizances.
10.19.090	Forfeiture, exoneration of recognizances—Judgment—Execution.
10.19.100	Stay of execution of forfeiture judgment—Bond.
10.19.105	Forfeiture judgment vacated on defendant's production—When.
10.19.110	Recognizances before district judge or magistrate—Forfeiture—Action.
10.19.120	Actions not barred by defect of form or formality.
10.19.130	Failure to appear before court after release on personal recognizance—Penalty.
10.19.140	Return of bond to surety, when.
10.19.150	Liability of surety, limitation.
10.19.160	Surrender of person under surety's bond.

Bail

*arresting officer's duties regarding: RCW 10.31.030.
pending appeal to supreme court: RCW 10.73.040.*

Fugitives, bail: Chapter 10.88 RCW.

Recognizance

*for stay of execution: RCW 10.82.020, 10.82.025.
to keep the peace as incidence of conviction of crime: RCW 10.64.070, 10.64.075.*

Recognizances relative to

*preliminary hearings: Chapter 10.16 RCW.
proceedings to keep the peace: Chapter 10.13 RCW.*

10.19.040 Officers authorized to take recognizance and approve bail. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and justify and approve the bail; he may administer an oath and examine the bail as to its sufficiency. [Code 1881 § 1034; 1873 p 229 § 214; 1854 p 114 § 78; RRS § 2087. FORMER PART OF SECTION: 1891 c 11 § 13; Code 1881 § 1927; 1873 p 395 § 225; 1854 p 108 § 33; RRS § 1957, now codified in RCW 10.16.070.]

10.19.060 Certification and filing of recognizances. Every recognizance taken by any peace officer must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and, from the time of filing, it has the same effect as if taken in open court. [Code 1881 § 1035; 1873 p 230 § 215; 1854 p 114 § 79; RRS § 2088.]

10.19.065 Taking and entering recognizances. Recognizances in criminal proceedings may be taken in open court and entered on the order book. [Code 1881 § 1033; 1854 p 114 § 77; RRS § 2086.]

10.19.090 Forfeiture, exoneration of recognizances—Judgment—Execution. In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution

may issue thereon the same as upon other judgments. If the surety is not notified by the court in writing of the unexplained failure of the defendant to appear within thirty days of the date for appearance, then the forfeiture shall be null and void and the recognizance exonerated. [1986 c 322 § 2; Code 1881 § 1137; 1873 p 230 § 217; 1867 p 103 § 1; RRS § 2231.]

Severability—1986 c 322: "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." [1986 c 322 § 6.]

10.19.100 Stay of execution of forfeiture judgment—Bond. The parties, or either of them, against whom such judgment may be entered in the superior or supreme courts, may stay said execution for sixty days by giving a bond with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty days, unless the same shall be vacated before the expiration of that time. [1891 c 28 § 86; Code 1881 § 1138; 1873 p 242 § 281; 1867 p 103 § 2; RRS § 2232. FORMER PART OF SECTION: 1891 c 28 § 87; Code 1881 § 1139; 1867 p 103 § 3; RRS § 2233, now codified as RCW 10.19.105.]

10.19.105 Forfeiture judgment vacated on defendant's production—When. If a bond be given and execution stayed, as provided in RCW 10.19.100, and the person for whose appearance such recognizance was given shall be produced in court before the expiration of said period of sixty days, the judge may vacate such judgment upon such terms as may be just and equitable, otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors. [1891 c 28 § 87; Code 1881 § 1139; 1867 p 103 § 3; RRS § 2233. Formerly RCW 10.19.100, part.]

10.19.110 Recognizances before district judge or magistrate—Forfeiture—Action. All recognizances taken and forfeited before any district judge or magistrate, shall be forthwith certified to the clerk of the superior court of the county; and it shall be the duty of the prosecuting attorney to proceed at once by action against all the persons bound in such recognizances, and in all forfeited recognizances whatever, or such of them as the prosecuting attorney may elect to proceed against. [1987 c 202 § 165; Code 1881 § 1166; 1873 p 230 § 215; 1854 p 128 § 175; RRS § 2234. FORMER PART OF SECTION: Code 1881 § 1936; 1873 p 397 § 235; 1863 p 390 § 216; 1859 p 141 § 185; 1854 p 109 § 43; RRS § 1965, now codified as RCW 10.16.190.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.19.120 Actions not barred by defect of form or formality. No action brought on any recognizance, bail, or appearance bond given in any criminal proceeding whatever shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety at the time when such default shall happen, or by reason of

any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court or before what district judge the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded. [1987 c 202 § 166; 1891 c 28 § 88; Code 1881 § 1167; 1854 p 129 § 176; RRS § 2235. FORMER PART OF SECTION: Code 1881 § 749; 1854 p 219 § 489; RRS § 777, now codified as RCW 19.72.170.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.19.130 Failure to appear before court after release on personal recognizance—Penalty. Any person, having been released on personal recognizance with the requirement of a subsequent personal appearance before any court of this state, who wilfully fails to appear when so required by the court shall be guilty of a crime. Unless otherwise shown, failure to appear when required shall be presumed to be wilful. The penalty for wilful failure to appear shall be a fine of not more than ten thousand dollars or imprisonment for not more than five years, or both. The penalty imposed under this section shall not exceed the maximum penalty for the original crime charged or, if there has been no charge, the offense for which the person was arrested. [1975 1st ex.s. c 2 § 1.]

10.19.140 Return of bond to surety, when. If a forfeiture has been entered against a person in a criminal case and the person is returned to custody or produced in court within twelve months from the forfeiture, then the full amount of the bond, less any and all costs determined by the court to have been incurred by law enforcement in transporting, locating, apprehending, or processing the return of the person to the jurisdiction of the court, shall be remitted to the surety if the surety was directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement. [1986 c 322 § 3.]

Severability—1986 c 322: See note following RCW 10.19.090.

10.19.150 Liability of surety, limitation. The liability of the surety is limited to the amount of the bond when acting within the scope of the surety's duties in issuing the bond. [1986 c 322 § 4.]

Severability—1986 c 322: See note following RCW 10.19.090.

10.19.160 Surrender of person under surety's bond. The surety on the bond may return to custody a person in a criminal case under the surety's bond if the surrender is accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for the surrender. The surrender shall be made to the facility in which the person was originally held in custody or the county or city jail affiliated with the court issuing the warrant resulting in bail. [1986 c 322 § 5.]

Severability—1986 c 322: See note following RCW 10.19.090.

(1987 Ed.)

Chapter 10.22 COMPROMISE OF MISDEMEANORS

Sections	
10.22.010	When permitted—Exceptions.
10.22.020	Procedure—Costs.
10.22.030	Compromise in all other cases forbidden.

10.22.010 When permitted—Exceptions. When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in RCW 10.22.020, except when it was committed:

(1) By or upon an officer while in the execution of the duties of his office.

(2) Riotously; or,

(3) With an intent to commit a felony. [Code 1881 § 1040; 1854 p 115 § 84; RRS § 2126. FORMER PART OF SECTION: Code 1881 § 1935; 1873 p 397 § 234; 1854 p 109 § 42; RRS § 1964, now codified as RCW 10.16.135.]

10.22.020 Procedure—Costs. In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge, in writing, that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another prosecution for the same offense. [1891 c 28 § 63; Code 1881 §§ 1041, 1042; 1873 p 230 § 220; 1854 p 115 § 84; RRS § 2127.]

10.22.030 Compromise in all other cases forbidden. No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter. [1891 c 28 § 64; Code 1881 § 1043; RRS § 2128.]

Chapter 10.25 JURISDICTION AND VENUE

Sections	
10.25.065	Perjury committed outside state in statement, etc., authorized by RCW 9A.72.085—Punishable in county where related act, etc., occurred.
10.25.070	Change of venue—Procedure.
10.25.130	Costs when case transferred to another county.
10.25.140	Change of venue by selection in and moving jury from another county.

10.25.065 Perjury committed outside state in statement, etc., authorized by RCW 9A.72.085—Punishable in county where related act, etc., occurred. Perjury committed outside of the state of Washington in a statement, declaration, verification, or certificate authorized by RCW 9A.72.085 is punishable in the county in this state in which occurs the act, transaction, matter, action,

or proceeding, in relation to which the statement, declaration, verification, or certification was given or made. [1981 c 187 § 4.]

10.25.070 Change of venue—Procedure. The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied the ground upon which the application is made does exist. [1891 c 28 § 7; Code 1881 § 1072; 1854 p 117 § 98; RRS § 2018.]

10.25.130 Costs when case transferred to another county. When a criminal case is transferred to another county pursuant to this chapter the county from which such case is transferred shall pay to the county in which the case is tried all costs accrued for per diem and mileage for jurors and witnesses and all other costs properly charged to a convicted defendant. [1961 c 303 § 2.]

10.25.140 Change of venue by selection in and moving jury from another county. When a change of venue is ordered and the court, upon motion to transfer a jury or in the absence of such motion, determines that it would be more economical to move the jury than to move the pending action and that justice will be served, a change of venue shall be accomplished by the selection of a jury in the county to which the venue would otherwise have been transferred and the selected jury moved to the county where the indictment or information was filed. [1981 c 205 § 1.]

Chapter 10.27

GRAND JURIES—CRIMINAL INVESTIGATIONS

Sections

10.27.010	Short title—Purpose.
10.27.020	Definitions.
10.27.030	Summoning grand jury.
10.27.040	Selection of grand jury members.
10.27.050	Special inquiry judge—Selection.
10.27.060	Discharge of panel, juror—Grounds.
10.27.070	Foreman—Oath—Instructions—Reporter—Secretary—Interpreter—Guard—Quorum—Legal advisers—Attorney general's duties—Special prosecutor—Witnesses.
10.27.080	Persons authorized to attend—Restrictions on attorneys.
10.27.090	Secrecy enjoined—Exceptions—Use and availability of evidence.
10.27.100	Inquiry as to offenses—Duties—Investigation.
10.27.110	Duration of sessions—Extensions.
10.27.120	Self-incrimination—Right to counsel.
10.27.130	Self-incrimination—Refusal to testify or give evidence—Procedure.
10.27.140	Witnesses—Attendance.
10.27.150	Indictments—Issuance.

10.27.160	Grand jury report.
10.27.170	Special inquiry judge—Petition for order.
10.27.180	Special inquiry judge—Disqualification from subsequent proceedings.
10.27.190	Special inquiry judge—Direction to public attorney to participate in proceedings in another county—Procedure.

Interpreters—Legal proceedings: Chapter 2.42 RCW.

Juries: Chapter 2.36 RCW.

10.27.010 Short title—Purpose. This chapter shall be known as the criminal investigatory act of 1971 and is enacted on behalf of the people of the state of Washington to serve law enforcement in combating crime and corruption. [1971 ex.s. c 67 § 1.]

10.27.020 Definitions. For the purposes of this chapter:

(1) The term "court" shall mean any superior court in the state of Washington.

(2) The term "public attorney" shall mean the prosecuting attorney of the county in which a grand jury or special grand jury is impaneled; the attorney general of the state of Washington when acting pursuant to RCW 10.27.070(9) and, the special prosecutor appointed by the governor, pursuant to RCW 10.27.070(10), and their deputies or special deputies.

(3) The term "indictment" shall mean a written accusation found by a grand jury.

(4) The term "principal" shall mean any person whose conduct is being investigated by a grand jury or special inquiry judge.

(5) The term "witness" shall mean any person summoned to appear before a grand jury or special inquiry judge to answer questions or produce evidence.

(6) A "grand jury" consists of not less than twelve nor more than seventeen persons, is impaneled by a superior court and constitutes a part of such court. The functions of a grand jury are to hear, examine and investigate evidence concerning criminal activity and corruption and to take action with respect to such evidence. The grand jury shall operate as a whole and not by committee.

(7) A "special inquiry judge" is a superior court judge designated by a majority of the superior court judges of a county to hear and receive evidence of crime and corruption. [1971 ex.s. c 67 § 2.]

10.27.030 Summoning grand jury. No grand jury shall be summoned to attend at the superior court of any county except upon an order signed by a majority of the judges thereof. A grand jury shall be summoned by the court, where the public interest so demands, whenever in its opinion there is sufficient evidence of criminal activity or corruption within the county or whenever so requested by a public attorney, corporation counsel or city attorney upon showing of good cause. [1971 ex.s. c 67 § 3.]

10.27.040 Selection of grand jury members. The court shall select the members of the grand jury from either the petit jury panel, or from a grand jury panel of one hundred individuals drawn by lot in the manner

provided for petit jury panels under chapter 2.36 RCW, or from both. [1971 ex.s. c 67 § 4.]

10.27.050 Special inquiry judge—Selection. In every county a superior court judge as designated by a majority of the judges shall be available to serve as a special inquiry judge to hear evidence concerning criminal activity and corruption. [1971 ex.s. c 67 § 4.]

10.27.060 Discharge of panel, juror—Grounds. Neither the grand jury panel nor any individual grand juror may be challenged, but the court may:

(1) At any time before a grand jury is sworn discharge the panel and summon another if it finds that the original panel does not substantially conform to the requirements of chapter 2.36 RCW; or

(2) At any time after a grand juror is drawn, refuse to swear him, or discharge him after he has been sworn, upon a finding that he is disqualified from service pursuant to chapter 2.36 RCW, or incapable of performing his duties because of bias or prejudice, or guilty of misconduct in the performance of his duties such as to impair the proper functioning of the grand jury. [1971 ex.s. c 67 § 6.]

10.27.070 Foreman—Oath—Instructions—Reporter—Secretary—Interpreter—Guard—Quorum—Legal advisers—Attorney general's duties—Special prosecutor—Witnesses. (1) When the grand jury is impaneled, the court shall appoint one of the jurors to be foreman, and also another of the jurors to act as foreman in case of the absence of the foreman.

(2) The grand jurors must be sworn pursuant to the following oath: "You, as grand jurors for the county of -----, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge and you will submit things truly as they come to your knowledge, according to your charge the laws of this state and your understanding; you shall indict no person through envy, hatred, malice or political consideration; neither will you leave any person unindicted through fear, favor, affection, reward or the hope thereof or political consideration. The counsel of the state, his advice, and that of your fellows you shall keep secret."

(3) After a grand jury has been sworn, the court must deliver or cause to be delivered to each grand juror a printed copy of all the provisions of this chapter, and the court may give the grand jurors any oral or written instructions, or both, relating to the proper performance of their duties at any time it deems necessary or appropriate.

(4) The court shall appoint a reporter to record the proceedings before the grand jury or special inquiry judge, and shall swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090. In addition, the foreman of the grand jury may, in his discretion, select one of the grand jurors to act as secretary to keep records of the grand jury's business.

(5) The court, whenever necessary, shall appoint an interpreter, and shall swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(6) When a person held in official custody is a witness before a grand jury or special inquiry judge, a public servant, assigned to guard him during his appearance may accompany him. The court shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(7) Proceedings of a grand jury shall not be valid unless at least twelve of its members are present. The foreman or acting foreman of the grand jury shall conduct proceedings in an orderly manner and shall administer an oath or affirmation in the manner prescribed by law to any witness who shall testify before the grand jury.

(8) The legal advisers of a grand jury are the court and public attorneys, and a grand jury may not seek or receive legal advice from any other source. When necessary or appropriate, the court or public attorneys or both must instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions shall be recorded by the reporter.

(9) (a) Upon request of the prosecuting attorney of the county in which a grand jury or special inquiry judge is impaneled, the attorney general shall assist such prosecuting attorney in attending such grand jury or special inquiry judge.

(b) Whenever directed by the court, the attorney general shall supersede the prosecuting attorney in attending the grand jury and in which event the attorney general shall be responsible for the prosecution of any indictment returned by the grand jury.

(c) When the attorney general is conducting a criminal investigation pursuant to powers otherwise granted to him, he shall attend all grand juries or special inquiry judges in relation thereto and shall prosecute any indictments returned by a grand jury.

(10) After consulting with the court and receiving its approval, the grand jury may request the governor to appoint a special prosecutor to attend the grand jury. The grand jury shall in the request nominate three persons approved by the court. From those nominated, the governor shall appoint a special prosecutor, who shall supersede the prosecuting attorney and the attorney general and who shall be responsible for the prosecution of any indictments returned by the grand jury attended by him.

(11) A public attorney shall attend the grand jurors when requested by them, and he may do so on his own motion within the limitations of RCW 10.27.020(2), 10.27.070(9) and 10.27.070(10) hereof, for the purpose of examining witnesses in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. He shall also, when requested by them, draft indictments and issue process for the attendance of witnesses.

(12) Subject to the approval of the court, the corporation counsel or city attorney for any city or town in the county where any grand jury has been convened may appear as a witness before the grand jury to advise the

grand jury of any criminal activity or corruption within his jurisdiction. [1971 ex.s. c 67 § 7.]

10.27.080 Persons authorized to attend—Restrictions on attorneys. No person shall be present at sessions of the grand jury or special inquiry judge except the witness under examination and his attorney, public attorneys, the reporter, an interpreter, a public servant guarding a witness who has been held in custody, if any, and, for the purposes provided for in RCW 10.27.170, any corporation counsel or city attorney. The attorney advising the witness shall only advise such witness concerning his right to answer or not answer any questions and the form of his answer and shall not otherwise engage in the proceedings. No person other than grand jurors shall be present while the grand jurors are deliberating or voting. Any person violating either of the above provisions may be held in contempt of court. [1971 ex.s. c 67 § 8.]

10.27.090 Secrecy enjoined—Exceptions—Use and availability of evidence. (1) Every member of the grand jury shall keep secret whatever he or any other grand juror has said, and how he or any other grand juror has voted, except for disclosure of indictments, if any, as provided in RCW 10.27.150.

(2) No grand juror shall be permitted to state or testify in any court how he or any other grand juror voted on any question before them or what opinion was expressed by himself or any other grand juror regarding such question.

(3) No grand juror, public or private attorney, city attorney or corporation counsel, reporter, interpreter or public servant who held a witness in custody before a grand jury or special inquiry judge, or witness, principal or other person shall disclose the testimony of a witness examined before the grand jury or special inquiry judge or other evidence received by it, except when required by the court to disclose the testimony of the witness examined before the grand jury or special inquiry judge for the purpose of ascertaining whether it is consistent with that of the witness given before the court, or to disclose his testimony given before the grand jury or special inquiry judge by any person upon a charge against such person for perjury in giving his testimony or upon trial therefor, or when permitted by the court in furtherance of justice.

(4) The public attorney shall have access to all grand jury and special inquiry judge evidence and may introduce such evidence before any other grand jury or any trial in which the same may be relevant.

(5) The court upon a showing of good cause may make any or all grand jury or special inquiry judge evidence available to any other public attorney, prosecuting attorney, city attorney or corporation counsel upon proper application and with the concurrence of the public attorney attending such grand jury. Any witness' testimony, given before a grand jury or a special inquiry judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the court. The court may also,

upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence:

(a) when given or presented before a special inquiry judge, if doing so is in the furtherance of justice; or

(b) when given or presented before a grand jury, if the court finds that doing so is necessary to prevent an injustice and that there is no reason to believe that doing so would endanger the life or safety of any witness or his family. The cost of any such transcript made available shall be borne by the applicant. [1971 ex.s. c 67 § 9.]

10.27.100 Inquiry as to offenses—Duties—Investigation. The grand jurors shall inquire into every offense triable within the county for which any person has been held to answer, if an indictment has not been found or an information filed in such case, and all other indictable offenses within the county which are presented to them by a public attorney or otherwise come to their knowledge. If a grand juror knows or has reason to believe that an indictable offense, triable within the county, has been committed, he shall declare such a fact to his fellow jurors who may begin an investigation. In such investigation the grand juror may be sworn as a witness. [1971 ex.s. c 67 § 10.]

10.27.110 Duration of sessions—Extensions. The length of time which a grand jury may sit after being convened shall not exceed sixty days. Before expiration of the sixty day period and any extensions, and upon showing of good cause, the court may order the grand jury panel extended for a period not to exceed sixty days. [1971 ex.s. c 67 § 11.]

10.27.120 Self-incrimination—Right to counsel. Any individual called to testify before a grand jury or special inquiry judge, whether as a witness or principal, if not represented by an attorney appearing with the witness before the grand jury or special inquiry judge, must be told of his privilege against self-incrimination. Such an individual has a right to representation by an attorney to advise him as to his rights, obligations and duties before the grand jury or special inquiry judge, and must be informed of this right. The attorney may be present during all proceedings attended by his client unless immunity has been granted pursuant to RCW 10.27.130. After immunity has been granted, such an individual may leave the grand jury room to confer with his attorney. [1971 ex.s. c 67 § 12.]

10.27.130 Self-incrimination—Refusal to testify or give evidence—Procedure. If in any proceedings before a grand jury or special inquiry judge, a person refuses, or indicates in advance a refusal, to testify or provide evidence of any other kind on the ground that he may be incriminated thereby, and if a public attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order. The hearing shall be subject

to the provisions of RCW 10.27.080 and 10.27.090, unless the witness shall request that the hearing be public.

If, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but he shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to this section. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the grand jury. [1971 ex.s. c 67 § 13.]

10.27.140 Witnesses—Attendance. (1) Except as provided in this section, no person has the right to appear as a witness in a grand jury or special inquiry judge proceeding.

(2) A public attorney may call as a witness in a grand jury or special inquiry judge proceeding any person believed by him to possess information or knowledge relevant thereto and may issue legal process and subpoena to compel his attendance and the production of evidence.

(3) The grand jury or special inquiry judge may cause to be called as a witness any person believed by it to possess relevant information or knowledge. If the grand jury or special inquiry judge desires to hear any such witness who was not called by a public attorney, it may direct a public attorney to issue and serve a subpoena upon such witness and the public attorney must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the public attorney may apply to the court which impaneled the grand jury for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the court may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(4) The proceedings to summon a person and compel him to testify or provide evidence shall as far as possible be the same as proceedings to summon witnesses and compel their attendance. Such persons shall receive only those fees paid witnesses in superior court criminal trials. [1971 ex.s. c 67 § 14.]

10.27.150 Indictments—Issuance. After hearing, examining and investigating the evidence before it, a grand jury may, in its discretion, issue an indictment against a principal. A grand jury shall find an indictment only when from all the evidence at least three-fourths of the jurors are convinced that there is probable cause to believe a principal is guilty of a criminal offense. When an indictment is found by a grand jury the foreman or acting foreman shall present it to the court. [1971 ex.s. c 67 § 15.]

10.27.160 Grand jury report. The grand jury may prepare its conclusions, recommendations and suggestions in the form of a grand jury report. Such report shall be released to the public only upon a determination

by a majority of the judges of the superior court of the county court that (1) the findings in the report deal with matters of broad public policy affecting the public interest and do not identify or criticize any individual; (2) the release of the report would be consistent with the public interest and further the ends of justice; and (3) release of the report would not prejudice any pending criminal investigation or trial. [1971 ex.s. c 67 § 16.]

10.27.170 Special inquiry judge—Petition for order. When any public attorney, corporation counsel or city attorney has reason to suspect crime or corruption, within the jurisdiction of such attorney, and there is reason to believe that there are persons who may be able to give material testimony or provide material evidence concerning such suspected crime or corruption, such attorney may petition the judge designated as a special inquiry judge pursuant to RCW 10.27.050 for an order directed to such persons commanding them to appear at a designated time and place in said county and to then and there answer such questions concerning the suspected crime or corruption as the special inquiry judge may approve, or provide evidence as directed by the special inquiry judge. [1971 ex.s. c 67 § 17.]

10.27.180 Special inquiry judge—Disqualification from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify or provide evidence at such inquiry in response to an order, summons or subpoena. [1971 ex.s. c 67 § 18.]

10.27.190 Special inquiry judge—Direction to public attorney to participate in proceedings in another county—Procedure. Upon petition of a public attorney to the special inquiry judge that there is reason to suspect that there exists evidence of crime and corruption in another county, and with the concurrence of the special inquiry judge and prosecuting attorney of the other county, the special inquiry judge may direct the public attorney to attend and participate in special inquiry judge proceedings in the other county held to inquire into crime and corruption which relates to crime or corruption under investigation in the initiating county. The proceedings of such special inquiry judge may be transcribed, certified and filed in the county of the public attorney's jurisdiction at the expense of that county. [1971 ex.s. c 67 § 19.]

Chapter 10.29

STATE-WIDE SPECIAL INQUIRY JUDGE ACT

Sections

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10.29.020	Intent.
10.29.030	Appointment of state-wide special inquiry judge— Petition—Procedure—Term—Extension— Confidentiality.

- 10.29.040 Scope of investigation and state-wide special inquiry judge proceeding—Request for authority to investigate other crimes.
- 10.29.050 Powers and duties of state-wide special inquiry judge.
- 10.29.060 Witness disclosing being called or nature of testimony—Penalty.
- 10.29.070 Rules.
- 10.29.080 Special prosecutor—Selection—Qualifications—Removal.
- 10.29.090 Operating budget—Contents—Audit.
- 10.29.100 Vacancy in office of state-wide special inquiry judge or special prosecutor.
- 10.29.110 Duties of special prosecutor or designee.
- 10.29.120 County prosecuting attorney to be advised—Filing and prosecution of informations—Expenses of prosecutions.
- 10.29.130 State-wide special inquiry judge—Disqualification from subsequent proceedings.
- 10.29.900 Severability—1980 c 146.

Organized crime advisory board: RCW 43.43.858.

Special inquiry judge: RCW 10.27.050, 10.27.170 through 10.27.190.

10.29.010 Short title. This chapter shall be known and may be cited as the State-wide Special Inquiry Judge Act. [1980 c 146 § 1.]

10.29.020 Intent. It is the intent of the legislature in enacting this chapter to strengthen and enhance the ability of the state to detect and eliminate organized criminal activity. [1980 c 146 § 2.]

10.29.030 Appointment of state-wide special inquiry judge—Petition—Procedure—Term—Extension—Confidentiality. (1) The organized crime advisory board shall have the authority, by a three-fourths vote at a regularly constituted meeting, to petition the Washington state supreme court for an order appointing a special inquiry judge as prescribed by this section. Such vote may be on its own motion or pursuant to a request from the prosecuting attorney of any county. In the event of such request from a prosecuting attorney the board shall vote on the question promptly. A petition filed under this section shall state the general crimes or wrongs to be inquired into and shall state the reasons why said crimes or wrongs are such that a state-wide special inquiry judge should be authorized to investigate. The supreme court may order the appointment of a state-wide special inquiry judge, in accordance with the petition, for a term of six calendar months. Upon petition by the special prosecutor, and with the approval of the majority of the members of the organized crime advisory board, the supreme court, by order, may extend the term of the state-wide special inquiry judge for three months. The term of the state-wide special inquiry judge may subsequently be extended in the same manner for additional three-month periods.

(2) If the petition is granted, the supreme court shall designate a judge of a superior court to act as a special inquiry judge. The supreme court shall ensure that sufficient visiting judges are made available to the superior court from which the appointment is made in order to compensate for any loss of judicial time.

(3) All of the information and data collected and processed by the organized crime advisory board and the

petition filed with the supreme court shall be confidential and not subject to examination or publication pursuant to chapter 42.17 RCW (Initiative Measure No. 276), as now existing or hereafter amended, except as provided by rules of the supreme court of Washington in the case of the petition. [1980 c 146 § 3.]

10.29.040 Scope of investigation and state-wide special inquiry judge proceeding—Request for authority to investigate other crimes. The scope of the investigation and of the special inquiry judge proceeding shall be limited to the general crimes and wrongs specified in the petition filed under RCW 10.29.030. The special prosecutor or special inquiry judge, however, may request authority to investigate other crimes by submitting a list of such crimes to the organized crime advisory board which may grant authorization to proceed by a three-fourths vote of the membership. [1980 c 146 § 4.]

10.29.050 Powers and duties of state-wide special inquiry judge. A state-wide special inquiry judge shall have the following powers and duties:

(1) To hear and receive evidence of crime and corruption.

(2) To appoint a reporter to record the proceedings; and to swear the reporter not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(3) Whenever necessary, to appoint an interpreter, and to swear him not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(4) When a person held in official custody is a witness before a state-wide special inquiry judge, a public servant, assigned to guard him during his appearance may accompany him. The state-wide special inquiry judge shall swear such public servant not to disclose any testimony or the name of any witness except as provided in RCW 10.27.090.

(5) To cause to be called as a witness any person believed by him to possess relevant information or knowledge. If the state-wide special inquiry judge desires to hear any such witness who was not called by the special prosecutor, it may direct the special prosecutor to issue and serve a subpoena upon such witness and the special prosecutor must comply with such direction. At any time after service of such subpoena and before the return date thereof, however, the special prosecutor may apply to the state-wide special inquiry judge for an order vacating or modifying the subpoena on the grounds that such is in the public interest. Upon such application, the state-wide special inquiry judge may in its discretion vacate the subpoena, extend its return date, attach reasonable conditions to directions, or make such other qualification thereof as is appropriate.

(6) Upon a showing of good cause may make available any or all evidence obtained to any other public attorney, prosecuting attorney, city attorney, or corporation counsel upon proper application and with the concurrence of the special prosecutor. Any witness' testimony, given before a state-wide special inquiry

judge and relevant to any subsequent proceeding against the witness, shall be made available to the witness upon proper application to the state-wide special inquiry judge. The state-wide special inquiry judge may also, upon proper application and upon a showing of good cause, make available to a defendant in a subsequent criminal proceeding other testimony or evidence when given or presented before a special inquiry judge, if doing so is in the furtherance of justice.

(7) Have authority to perform such other duties as may be required to effectively implement this chapter, in accord with rules adopted by the supreme court relating to these proceedings.

(8) Have authority to hold in contempt of court any person who shall disclose the name or testimony of a witness examined before a state-wide special inquiry judge except when required by a court to disclose the testimony given before such state-wide special inquiry judge in a subsequent criminal proceeding. [1980 c 146 § 5.]

10.29.060 Witness disclosing being called or nature of testimony—Penalty. Any witness who shall disclose the fact that he or she has been called as a witness before a state-wide special inquiry judge or who shall disclose the nature of the testimony given shall be guilty of a misdemeanor. [1980 c 146 § 6.]

10.29.070 Rules. The supreme court shall develop and adopt rules to govern the procedures of a state-wide special inquiry judge proceeding including rules assuring the confidentiality of all proceedings, testimony, and the identity of persons called as witnesses. The adoption of such rules shall be subject to the approval of such rules by the senate and house judiciary committees. [1980 c 146 § 7.]

10.29.080 Special prosecutor—Selection—Qualifications—Removal. If the supreme court appoints a state-wide special inquiry judge under RCW 10.29.030, the organized crime advisory board shall submit to the governor the name of an individual who, with the consent of the governor, shall serve as special prosecutor for the state-wide special inquiry judge proceeding. Any individual whose name is submitted under this section to the governor shall be licensed to practice law in the state of Washington and shall have at least five years' professional experience as one or more of the following: (1) Prosecuting attorney; (2) deputy prosecuting attorney; (3) United States attorney; or (4) assistant United States attorney. No such person shall have resided during the five years immediately preceding the appointment in a county in which the state-wide special inquiry judge will likely be required to investigate crimes. A special prosecutor appointed under this section shall be removed only upon a majority recommendation of the organized crime advisory board and the consent of the governor. [1980 c 146 § 8.]

10.29.090 Operating budget—Contents—Audit. Within ten days of his or her appointment, a special

prosecutor selected under this chapter shall submit to the organized crime advisory board an operating budget to fund the activities of his or her office. The budget may include, but shall not be limited to, funds for the hiring of assistant special prosecutors, investigators, and clerical staff. Upon the approval of the budget by a majority of the members of the board, the costs and expenses of the prosecutor's operating budget shall be paid for by the state out of the organized crime prosecution revolving fund. Further operating budgets shall be proposed, approved, and funded pursuant to this section if the term of a state-wide special inquiry judge is extended pursuant to RCW 10.29.030.

Vouchers and other budget and accounting records of a special inquiry judge proceeding including such records of the special prosecutor shall be subject to audit by the state auditor but shall not be public records within the meaning of chapter 42.17 RCW. [1980 c 146 § 9.]

Organized crime prosecution revolving fund: RCW 43.43.866.

10.29.100 Vacancy in office of state-wide special inquiry judge or special prosecutor. Whenever a state-wide special inquiry judge or special prosecutor appointed under this chapter dies or in any other way is rendered incapable of continuing the duties of his or her office, a successor shall be appointed to serve for the remainder of the judge's or prosecutor's term in the manner provided for by RCW 10.29.030 and 10.29.080 for the appointment of state-wide special inquiry judges and special prosecutors. [1980 c 146 § 10.]

10.29.110 Duties of special prosecutor or designee. The special prosecutor or his designee shall:

(1) Attend all proceedings of the state-wide special inquiry judge;

(2) Have the authority to issue subpoenas for witnesses state-wide;

(3) Examine witnesses, present evidence, draft reports as directed by the state-wide special inquiry judge, and draft and file informations under RCW 10.29.120. [1980 c 146 § 11.]

10.29.120 County prosecuting attorney to be advised—Filing and prosecution of informations—Expenses of prosecutions. (1) The special prosecutor shall advise the county prosecuting attorney in any affected county of the nature of the state-wide special inquiry judge investigation and of any informations arising from such proceedings unless such disclosures will create a substantial likelihood of a conflict of interest for the county prosecuting attorney.

(2) The special prosecutor may file and prosecute an information in the county where proper venue lies, after having advised the county prosecuting attorney as provided in this section and determined that such prosecuting attorney does not intend to do so, or pursuant to an agreement between them that the special prosecutor shall do so.

(3) Informations filed and prosecuted pursuant to this chapter shall meet the requirements of chapter 10.37 RCW.

(4) The expenses of prosecutions initiated and maintained by the special prosecutor shall be paid as part of the state-wide special inquiry judge program as provided in RCW 10.29.090. [1980 c 146 § 12.]

10.29.130 State-wide special inquiry judge—Disqualification from subsequent proceedings. The judge serving as a special inquiry judge shall be disqualified from acting as a magistrate or judge in any subsequent court proceeding arising from such inquiry except alleged contempt for neglect or refusal to appear, testify, or provide evidence at such inquiry in response to an order, summons, or subpoena. [1980 c 146 § 13.]

10.29.900 Severability—1980 c 146. If any provision of this 1980 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. [1980 c 146 § 19.]

Chapter 10.31

WARRANTS AND ARRESTS

Sections

10.31.030	Service—How—Warrant not in possession, procedure—Bail.
10.31.040	Officer may break and enter.
10.31.050	Officer may use force.
10.31.060	Arrest by telegraph or teletype.
10.31.100	Arrest without warrant (as amended by 1987 c 66).
10.31.100	Arrest without warrant (as amended by 1987 c 154).
10.31.100	Arrest without warrant (as amended by 1987 c 277).
10.31.100	Arrest without warrant (as amended by 1987 c 280).

Rules of court: Warrant upon indictment or information—CrR 2.2.
Search and seizure: Chapter 10.79 RCW.

10.31.030 Service—How—Warrant not in possession, procedure—Bail. The officer making an arrest must inform the defendant that he acts under authority of a warrant, and must also show the warrant: *Provided*, That if the officer does not have the warrant in his possession at the time of arrest he shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement: *Provided, further*, That any officer making an arrest under this section shall, if the person arrested wishes to deposit bail, take such person directly and without delay before a judge or before an officer authorized to take the recognizance and justify and approve the bail, including the deposit of a sum of money equal to bail. Bail shall be the amount fixed by the warrant. Such judge or authorized officer shall hold bail for the legal authority within this state which issued such warrant if other than such arresting authority. [1970 ex.s. c 49 § 3; 1891 c 28 § 43; Code 1881 § 1030; 1873 p 229 § 210; 1854 p 114 § 74; RRS § 2083.]

Severability—1970 ex.s. c 49: See note following RCW 9.69.100.
Bail: Chapter 10.19 RCW.

10.31.040 Officer may break and enter. To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other inclosure, if, after notice of his office and purpose, he be refused admittance. [Code 1881 § 1170; 1854 p 129 § 179; RRS § 2082.]

10.31.050 Officer may use force. If after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest. [Code 1881 § 1031; 1873 p 229 § 211; 1854 p 114 § 75; RRS § 2084.]

10.31.060 Arrest by telegraph or teletype. Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any justice of the supreme court, or any judge of either the court of appeals or superior court may indorse thereon an order signed by him and authorizing the service thereof by telegraph or teletype, and thereupon such warrant and order may be sent by telegraph or teletype to any marshal, sheriff, constable or policeman, and on the receipt of the telegraphic or teletype copy thereof by any such officer, he shall have the same authority and be under the same obligations to arrest, take into custody and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof, duly indorsed thereon, had been placed in his hands, and the said telegraphic or teletype copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original; but prior to indictment and conviction, no such order shall be made by any officer, unless in his judgment there is probable cause to believe the said accused person or persons guilty of the offense charged: *Provided*, That the making of such order by any officer aforesaid, shall be prima facie evidence of the regularity thereof, and of all the proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office or police agency from which the same is sent, and in telegraphing or teletyping the same, the original or the said certified copy may be used. [1971 c 81 § 48; 1967 c 91 § 1; Code 1881 § 2357; 1865 p 75 § 16; RRS § 2081. Formerly RCW 10.31.060 through 10.31.090.]

10.31.100 Arrest without warrant (as amended by 1987 c 66). A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through ~~((5))~~ (8) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060, chapter 26.26 RCW,

or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence; or

(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.02.095 shall have the authority to arrest the person.

(6) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(7) Except as specifically provided in subsections (2), (3), ((and)) (4), and (6) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

((7)) (8) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) if the police officer acts in good faith and without malice. [1987 c 66 § 1. Prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

10.31.100 Arrest without warrant (as amended by 1987 c 154). A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (5) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property, or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270 shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence; or

(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.02.095 shall have the authority to arrest the person.

(6) Except as specifically provided in subsections (2), (3), and (4) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(7) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) if the police officer acts in good faith and without malice. [1987 c 154 § 1. Prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

10.31.100 Arrest without warrant (as amended by 1987 c 277). A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through ((5)) (6) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060, chapter 26.26 RCW,

or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence; or

(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.02.095 shall have the authority to arrest the person.

(6) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(7) Except as specifically provided in subsections (2), (3), and (4) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

~~((7))~~ (8) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) if the police officer acts in good faith and without malice. [1987 c 277 § 2. Prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

10.31.100 Arrest without warrant (as amended by 1987 c 280). A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (5) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 10.99.040(2), 10.99.050, 26.09.060, chapter 26.26 RCW, or chapter 26.50 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence or excluding the person from a residence; or

(b) The person is eighteen years or older and within the preceding four hours has assaulted that person's spouse, former spouse, or a person eighteen years or older with whom the person resides or has formerly resided and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that spouses, former spouses, or other persons who reside together or formerly resided together have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence between the persons involved.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.525, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 88.02.095 shall have the authority to arrest the person.

(6) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(7) Except as specifically provided in subsections (2), (3), and (4) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

~~((7))~~ (8) No police officer may be held criminally or civilly liable for making an arrest pursuant to RCW 10.31.100(2) or (6) if the police officer acts in good faith and without malice. [1987 c 280 § 20. Prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

Reviser's note: RCW 10.31.100 was amended four times during the 1987 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—1987 c 280: See RCW 10.14.900.

Effective date—Severability—1984 c 263: See RCW 26.50.901, 26.50.902.

Arrest procedure involving traffic violations: Chapter 46.64 RCW.

Domestic violence, peace officers—Immunity: RCW 26.50.140.

Uniform Controlled Substances Act: Chapter 69.50 RCW.

Chapter 10.34
FUGITIVES OF THIS STATE

Sections

- 10.34.010 Officer may arrest defendant in any county.
- 10.34.020 Escape—Retaking prisoner—Authority.
- 10.34.030 Escape—Retaking in foreign state—Extradition agents.

Escape: Chapter 9A.76 RCW.

Extradition and fresh pursuit: Chapter 10.88 RCW.

Return of parole violators from outside state: RCW 9.95.280 through 9.95.300.

10.34.010 Officer may arrest defendant in any county. If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this state, and for that purpose may command aid, and exercise the same authority as in his own county. [Code 1881 § 1922; 1873 p 394 § 220; 1854 p 107 § 28; RRS § 1950.]

10.34.020 Escape—Retaking prisoner—Authority. If a person arrested escape or be rescued, the person from whose custody he made his escape, or was rescued, may immediately pursue and retake him at any time, and within any place in the state. To retake the person escaping or rescued, the person pursuing has the same power to command assistance as given in cases of arrest. [Code 1881 § 1032; 1873 p 229 § 212; 1854 p 114 § 76; RRS § 2085.]

10.34.030 Escape—Retaking in foreign state—Extradition agents. The governor may appoint agents (1) to make a demand upon the executive authority of any state or territory for the surrender of any fugitive from justice, or any other person charged with a felony or any other crime in this state or (2) to accept the voluntary surrender of any such person who has waived extradition. Whenever an application shall be made to the governor for the appointment of an agent he may require the official submitting the same to provide whatever information is necessary prior to approval of the application.

The accounts of the agents appointed by the governor under this section shall in all cases be paid from the state treasury out of funds appropriated for that purpose upon claims approved by the office of the governor. The office of the governor may prescribe the amounts to be reimbursed to such agents, in the manner in which legislative bodies of political subdivisions of the state may prescribe the amounts to be reimbursed to officers and employees thereof, as set forth in RCW 42.24.090: *Provided*, That these expenses shall be reasonable, and shall be computed on the basis of actual expenditures incurred, and not on an hourly or per diem basis. [1967 c

91 § 2; 1891 c 28 § 98; Code 1881 § 971; 1873 p 217 § 157; 1854 p 102 § 5; RRS § 2241.]

Chapter 10.37
ACCUSATIONS AND THEIR REQUISITES

Sections

- 10.37.010 Pleadings required in criminal proceedings.
- 10.37.015 Charge by information or indictment—Exceptions.
- 10.37.040 Indictment—Form.
- 10.37.050 Indictment or information—Sufficiency.
- 10.37.052 Indictment or information—Requisites.
- 10.37.054 Indictment or information—Certainty.
- 10.37.056 Indictment or information—Certain defects or imperfections deemed immaterial.
- 10.37.060 Indictment or information—Separation into counts—Consolidation.
- 10.37.070 Animals—Description of.
- 10.37.080 Forgery—Description of instrument.
- 10.37.090 Injury to person or intention concerning.
- 10.37.100 Judgment, how pleaded.
- 10.37.110 Larceny or embezzlement—Specification.
- 10.37.120 Libel—Innuendos—Publication.
- 10.37.130 Obscene literature—Description.
- 10.37.140 Perjury—Subornation of perjury—Description of matter.
- 10.37.150 Presumptions of law need not be stated.
- 10.37.160 Statute—Exact words need not be used.
- 10.37.170 Statute, private—Description.
- 10.37.190 Words and phrases—How used.

Rules of court: Rights of dependents—CrR 3.1 through 3.6.

Ownership of property, proof of: RCW 10.58.060.

10.37.010 Pleadings required in criminal proceedings. No pleading other than an indictment, information or complaint shall be required on the part of the state in any criminal proceedings in any court of the state, and when such pleading is in the manner and form as provided by law the defendant shall be required to plead thereto as prescribed by law without any further action or proceedings of any kind on the part of the state. [1925 ex.s. c 150 § 3; RRS § 2050-1. FORMER PARTS OF SECTION: (i) 1927 c 103 § 1; Code 1881 § 764; RRS § 2023, now codified as RCW 10.37.015. (ii) 1909 c 87 § 1; 1891 c 117 § 1; 1890 p 100 § 1; RRS § 2024, now codified as RCW 10.37.026. (iii) 1891 c 28 § 19; Code 1881 § 1003; 1873 p 224 § 186; 1869 p 240 § 181; RRS § 2054, now codified as RCW 10.37.025.]

10.37.015 Charge by information or indictment—Exceptions. No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a district or municipal judge, or before a court martial. [1987 c 202 § 167; 1927 c 103 § 1; Code 1881 § 764; RRS § 2023. Formerly RCW 10.37.010, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.37.040 Indictment—Form. The indictment may be substantially in the following form:

State of Washington	}	Superior Court of the State of Washington for the County of
v.		
A. ----- B. -----		-----

A. B. is accused by the grand jury of the -----, by this indictment, of the crime of [here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like; or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law], committed as follows:

The said A. B. on the ----- day of -----, 19--, in the county of -----, aforesaid, [here set forth the act charged as a crime.]

Dated at -----, in the county aforesaid, the ----- day of -----, A.D. 19--.

(Signed) C. D., Prosecuting Attorney.

(Indorsed) A true bill.

(Signed) E. F., Foreman of the Grand Jury.

[1891 c 28 § 21; Code 1881 § 1005; 1873 p 225 § 188; 1869 p 240 § 183; RRS § 2056.]

10.37.050 Indictment or information—Sufficiency. The indictment or information is sufficient if it can be understood therefrom—

- (1) That it is entitled in a court having authority to receive [it;]
- (2) That it was found by a grand jury of the county in which the court was held;
- (3) That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown;
- (4) That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein;
- (5) That the crime was committed at some time previous to the finding of the indictment or filing of the information, and within the time limited by law for the commencement of an action therefor;
- (6) That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

(7) The act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case. [1891 c 28 § 29; Code 1881 § 1014; 1873 p 226 § 197; 1869 p 242 § 192; RRS § 2065. FORMER PARTS OF SECTION: (i) 1891 c 28 § 20; Code 1881 § 1004; 1873 p 224 § 187; 1869 p 240 § 182; RRS § 2055, now codified as RCW 10.37.052. (ii) 1891 c 28 § 22; Code 1881 § 1006; 1873 p 225 § 189; 1854 p 112 § 61; 1869 p 241 § 184; RRS § 2057, now codified as RCW 10.37.054. (iii) 1891 c 28 § 30; Code 1881 § 1015; 1873 p 227 § 198; 1869 p 242 § 193; RRS § 2066, now codified as RCW 10.37.056.]

10.37.052 Indictment or information—Requisites. The indictment or information must contain—

- (1) The title of the action, specifying the name of the court to which the indictment or information is presented and the names of the parties;
- (2) A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended. [1891 c 28 § 20; Code 1881 § 1004; 1873 p 224 § 187; 1869 p 240 § 182; RRS § 2055. Formerly RCW 10.37.050, part.]

10.37.054 Indictment or information—Certainty. The indictment or information must be direct and certain as it regards:

- (1) The party charged;
- (2) The crime charged; and
- (3) The particular circumstances of the crime charged, when they are necessary to constitute a complete crime. [1891 c 28 § 22; Code 1881 § 1006; 1873 p 225 § 189; 1869 p 241 § 184; 1854 p 112 § 61; RRS § 2057. Formerly RCW 10.37.050, part.]

10.37.056 Indictment or information—Certain defects or imperfections deemed immaterial. No indictment or information is insufficient, nor can the trial, judgment or other proceedings thereon be affected, by reason of any of the following matters, which were formerly deemed defects or imperfections:

- (1) For want of an allegation of the time or place of any material fact, when the time and place have been once stated;
- (2) For the omission of any of the following allegations, namely: "With force and arms," "contrary to the form of the statute or the statutes," or "against the peace and dignity of the state;"
- (3) For the omission to allege that the grand jury was impaneled, sworn, or charged;
- (4) For any surplusage or repugnant allegation or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged; nor
- (5) For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits. [1891 c 28 § 30; Code 1881 § 1015; 1873 p 227 § 198; 1869 p 242 § 193; RRS § 2066. Formerly RCW 10.37.050, part.]

Ownership of property, proof of: RCW 10.58.060.

10.37.060 Indictment or information—Separation into counts—Consolidation. When there are several charges against any person, or persons, for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments or informations the whole may be joined in one indictment, or information, in separate counts; and, if two or more indictments are found, or two or more informations filed, in such cases, the court may order such indictments or informations to be consolidated. [1925 ex.s.

c 109 § 1; 1891 c 28 § 24; Code 1881 § 1008; 1873 p 225 § 191; 1869 p 241 § 186; RRS § 2059.]

10.37.070 Animals—Description of. When the crime involves the taking of or injury to an animal the indictment or information is sufficiently certain in that respect if it describes the animal by the common name of its class. [1891 c 28 § 26; Code 1881 § 1011; 1873 p 226 § 194; 1869 p 241 § 189; RRS § 2062.]

Crimes relating to animals: Chapter 9.08 RCW.
Larceny: Chapter 9A.56 RCW.

10.37.080 Forgery—Description of instrument. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. [1891 c 28 § 35; Code 1881 § 1020; 1873 p 227 § 203; 1854 p 113 § 68; RRS § 2071.]

Forgery: Chapter 9A.60 RCW.

10.37.090 Injury to person or intention concerning. When the crime involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material. [Code 1881 § 1010; 1873 p 226 § 193; 1869 p 241 § 188; RRS § 2061.]

10.37.100 Judgment, how pleaded. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state in the indictment or information the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial. [1891 c 28 § 32; Code 1881 § 1017; 1873 p 227 § 200; 1869 p 242 § 195; 1854 p 112 § 65; RRS § 2068.]

10.37.110 Larceny or embezzlement—Specification. In an indictment or information for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination or kind thereof. [1891 c 28 § 38; Code 1881 § 1023; RRS § 2074.]

Larceny: Chapter 9A.56 RCW.
Ownership of property, proof of: RCW 10.58.060.

10.37.120 Libel—Innuendos—Publication. An indictment or information for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published

concerning him; and the fact that it was so published must be established on the trial. [1891 c 28 § 34; Code 1881 § 1019; 1873 p 227 § 202; 1869 p 243 § 197; RRS § 2070.]

Libel: Chapter 9.58 RCW.

10.37.130 Obscene literature—Description. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof. [1891 c 28 § 39; Code 1881 § 1024; RRS § 2075.]

Obscenity: Chapter 9.68 RCW.

10.37.140 Perjury—Subornation of perjury—Description of matter. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. [1891 c 28 § 36; Code 1881 § 1021; 1873 p 228 § 204; 1869 p 243 § 199; 1854 p 112 § 67; RRS § 2072.]

Perjury: Chapter 9A.72 RCW.

10.37.150 Presumptions of law need not be stated. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment or information. [1891 c 28 § 31; Code 1881 § 1016; 1873 p 227 § 199; 1869 p 242 § 194; RRS § 2067.]

10.37.160 Statute—Exact words need not be used. Words used in a statute to define a crime need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used. [1891 c 28 § 28; Code 1881 § 1013; 1873 p 226 § 196; 1869 p 241 § 191; RRS § 2064.]

10.37.170 Statute, private—Description. In pleading a private statute, or right derived therefrom, it is sufficient to refer, in the indictment or information, to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. [1891 c 28 § 33; Code 1881 § 1018; 1873 p 227 § 201; 1869 p 243 § 196; 1854 p 112 § 66; RRS § 2069.]

10.37.190 Words and phrases—How used. The words used in an indictment or information must be

construed in their usual acceptance, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. [1891 c 28 § 27; Code 1881 § 1012; 1873 p 227 § 195; 1869 p 241 § 190; RRS § 2063.]

Chapter 10.40 ARRAIGNMENT

Sections

10.40.050	Entry and use of true name.
10.40.060	Pleading to arraignment.
10.40.070	Motion to set aside indictment.
10.40.075	Motion to set aside indictment—Grounds not allowed, when.
10.40.090	Sustaining motion—Effect of.
10.40.100	Overruling motion—Pleading over.
10.40.110	Demurrer to indictment or information.
10.40.120	Sustaining demurrer—When final.
10.40.125	Sustaining demurrer, etc.—When not final.
10.40.140	Overruling demurrer—Pleading over.
10.40.170	Plea of guilty.
10.40.180	Plea of not guilty.
10.40.190	Refusal to answer.
10.40.200	Deportation of aliens upon conviction—Advice—Legislative intent.

Rules of court: Arraignment—CrR 4.1.

10.40.050 Entry and use of true name. If he alleges that another name is his true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted or informed against. [1891 c 28 § 49; Code 1881 § 1065; 1873 p 232 § 227; 1854 p 116 § 91; RRS § 2097.]

Action on discovery of true name: RCW 10.46.060.

10.40.060 Pleading to arraignment. In answer to the arraignment, the defendant may move to set aside the indictment or information, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it. [1891 c 28 § 50; Code 1881 § 1045; RRS § 2098.]

10.40.070 Motion to set aside indictment. The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained:

(1) When any person, other than the grand jurors, was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law;

(2) If the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law. [1983 c 3 § 12; 1957 c 10 § 1; Code 1881 § 1046; RRS § 2099. FORMER PART OF SECTION: Code 1881 § 1047; RRS § 2100, now codified as RCW 10.40.075.]

10.40.075 Motion to set aside indictment—Grounds not allowed, when. The ground of the motion to

set aside the indictment mentioned in the fourth subdivision of RCW 10.40.070 is not allowed to a defendant who has been held to answer before indictment. [Code 1881 § 1047; RRS § 2100. Formerly RCW 10.40.070, part.]

10.40.090 Sustaining motion—Effect of. An order to set aside the indictment or information as provided in this chapter shall be no bar to a future prosecution for the same offense. [1891 c 28 § 54; Code 1881 § 1050; RRS § 2104.]

10.40.100 Overruling motion—Pleading over. If the motion to set aside the indictment [or information] be denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. [1891 c 28 § 52; Code 1881 § 1048; RRS § 2102.]

10.40.110 Demurrer to indictment or information. The defendant may demur to the indictment or information when it appears upon its face either—

(1) That it does not substantially conform to the requirements of this code;

(2) [That] more than one crime is charged;

(3) That the facts charged do not constitute a crime;

(4) That the indictment or information contains any matter which, if true, would constitute a defense or other legal bar to the action. [1891 c 28 § 55; Code 1881 § 1051; RRS § 2105.]

10.40.120 Sustaining demurrer—When final. If the demurrer is sustained because the indictment or information contains matter which is a legal defense or bar to the action, the judgment shall be final, and the defendant must be discharged. [1891 c 28 § 56; Code 1881 § 1052; RRS § 2106. FORMER PART OF SECTION: 1891 c 28 § 61; Code 1881 § 1060; RRS § 2114, now codified as RCW 10.40.125.]

10.40.125 Sustaining demurrer, etc.—When not final. The judgment for the defendant on a demurrer to the indictment or information, except where it is otherwise provided, or for an objection taken at the trial to its form or substance, or for variance between the indictment or information and the proof, shall not bar another prosecution for the same offense. [1891 c 28 § 61; Code 1881 § 1060; RRS § 2114. Formerly RCW 10.40.120, part.]

10.40.140 Overruling demurrer—Pleading over. If the demurrer is overruled the defendant has a right to put in a plea. If he fails to do so, judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense. [Code 1881 § 1053; RRS § 2107.]

10.40.170 Plea of guilty. The plea of guilty can only be put in by the defendant himself in open court. [Code 1881 § 1056; RRS § 2110. FORMER PART OF SECTION: Code 1881 § 1057; RRS § 2111, now codified as RCW 10.40.175.]

10.40.180 Plea of not guilty. The plea of not guilty is a denial of every material allegation in the indictment or information; and all matters of fact may be given in evidence under it, except a former conviction or acquittal. [1891 c 28 § 59; Code 1881 § 1058; RRS § 2112.]

10.40.190 Refusal to answer. If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court. [1891 c 28 § 62; Code 1881 § 1061; 1873 p 232 § 224; 1854 p 116 § 88; RRS § 2115.]

10.40.200 Deportation of aliens upon conviction—Advisement—Legislative intent. (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. [1983 c 199 § 1.]

Notice to courts—Rules—Forms: "The office of the administrator for the courts shall notify all courts of the requirements contained in RCW 10.40.200. The judicial council shall recommend to the supreme court appropriate court rules to ensure compliance with the requirements of RCW 10.40.200. Until court rules are promulgated, the office of the administrator for the courts shall develop and distribute forms necessary for the courts to comply with RCW 10.40.200." [1983 c 199 § 2.]

Effective date—1983 c 199 § 1: "Section 1 of this act shall take effect on September 1, 1983." [1983 c 199 § 3.]

Chapter 10.43

FORMER ACQUITTAL OR CONVICTION

Sections

10.43.020	Offense embraces lower degree and included offenses.
10.43.030	Conviction or acquittal in other county.
10.43.040	Foreign conviction or acquittal.
10.43.050	Acquittal, when a bar.

Discharge of codefendant as bar to further prosecution: RCW 10.46.110.

Double jeopardy: State Constitution Art. 1 § 9.

10.43.020 Offense embraces lower degree and included offenses. When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein. [1891 c 28 § 74; Code 1881 § 1096; 1873 p 238 § 257; 1854 p 120 § 121; RRS § 2166.]

Bar as to prosecution for same crime in another degree, or attempt: RCW 10.43.050.

10.43.030 Conviction or acquittal in other county. Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this state, such former acquittal or conviction is a sufficient defense. [1909 c 249 § 20; RRS § 2272.]

10.43.040 Foreign conviction or acquittal. Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense. [1909 c 249 § 19; RRS § 2271.]

10.43.050 Acquittal, when a bar. No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information

charging a crime consisting of different degrees, he cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof. [1909 c 249 § 64; Code 1881 § 769; RRS § 2316.]

Offense embraces lower degree and included offenses: RCW 10.43.020.

Ownership of property—Proof of: RCW 10.58.060.

Chapter 10.46 SUPERIOR COURT TRIAL

Sections

10.46.020	Trial docket.
10.46.060	True name inserted in proceedings.
10.46.070	Conduct of trial—Generally.
10.46.080	Continuances.
10.46.110	Discharging defendant to give evidence.
10.46.190	Liability of convicted person for costs—Jury fee.
10.46.200	Costs allowed to acquitted or discharged defendant.
10.46.210	Taxation of costs on acquittal or discharge—Generally—Frivolous complaints.
10.46.220	Cost bills in felony cases—Certification.
10.46.230	Cost bills in felony cases—Payment.

Criminal rules for superior court: Rules of court: Criminal Rules for Superior Court (CrR).

Superior court rules: State Constitution Art. 4 § 24.

10.46.020 Trial docket. The clerk shall, in preparing the docket of criminal cases, enumerate the indictments and informations pending according to the date of their filing, specifying opposite to the title of each action whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail; and shall, in like manner, enter therein all indictments and informations on which issues of fact are joined, all cases brought to the court on change of venue from other counties, and all cases pending upon appeal from inferior courts. [1891 c 28 § 65; Code 1881 § 1044; 1873 p 231 § 222; 1854 p 115 § 86; RRS § 2134.]

10.46.060 True name inserted in proceedings. When a defendant is designated in the indictment or information by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted or informed against by the name mentioned in the indictment or information. [1891 c 28 § 23; Code 1881 § 1007; 1873 p 225 § 190; 1869 p 241 § 185; RRS § 2058.]

True name: RCW 10.40.050.

10.46.070 Conduct of trial—Generally. The court shall decide all questions of law which shall arise in the course of the trial, and the trial shall be conducted in the same manner as in civil actions. [1891 c 28 § 70; Code 1881 § 1088; 1873 p 237 § 249; 1854 p 119 § 111; RRS § 2158. FORMER PART OF SECTION: 1891 c 28 § 66, part; Code 1881 § 1078; 1873 p 236 § 239; 1854 p 118 § 101; RRS § 2137, part, now codified as RCW 10.49.020.]

Rules of court: This section superseded, in part, by CrR 6. See comment preceding CrR 6.1.

10.46.080 Continuances. A continuance may be granted in any case on the ground of the absence of evidence on the motion of the defendant supported by affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; and also the name and place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained, and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper the continuance shall not be granted. [Code 1881 § 1077; 1877 p 206 § 7; RRS § 2135.]

10.46.110 Discharging defendant to give evidence. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a codefendant. The order of discharge is a bar to another prosecution for the same offense. [Code 1881 § 1092; 1873 p 237 § 253; 1854 p 120 § 117; RRS § 2162.]

Conviction or acquittal—Several defendants: RCW 10.61.035.

10.46.190 Liability of convicted person for costs—Jury fee. Every person convicted of a crime or held to bail to keep the peace shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the superior court, a jury fee as provided for in civil actions, and when tried by a jury before a committing magistrate, twenty-five dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied. [1977 ex.s. c 248 § 1; 1977 ex.s. c 53 § 1; 1961 c 304 § 8; Code 1881 § 2105; 1869 p 418 § 3; RRS § 2227.]

Disposition of fines and costs: Chapter 10.82 RCW.

Jury

fees: RCW 4.44.110, 36.18.020.

in district court: RCW 10.04.050.

trials by: Chapter 10.49 RCW.

10.46.200 Costs allowed to acquitted or discharged defendant. No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is found against him, or for want of prosecution, shall be liable for any costs or fees of any officer or for any charge of subsistence while he was in custody, but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant; and charges for subsistence of the defendant while in custody shall be taxed and paid as other costs and charges in such cases. [Code

1881 § 1168; 1877 p 207 § 10; 1854 p 129 § 177; RRS § 2236.]

10.46.210 Taxation of costs on acquittal or discharge—Generally—Frivolous complaints. When any person shall be brought before a court or other committing magistrate of any county, city or town in this state, having jurisdiction of the alleged offense, charged with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city or town for or in which the said complaint is triable, but if the court or other magistrate trying said charge, shall decide the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law. [1987 c 202 § 168; Code 1881 § 2103; 1869 p 418 § 1; RRS § 2225.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.46.220 Cost bills in felony cases—Certification. In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much thereof, as is allowable by law. The clerk of the superior court shall thereupon, under his hand, and under the seal of the court, certify said triplicate cost bills, and shall file one with the papers of cause, and shall transmit one to the administrator for the courts and one to the county auditor of the county in which said felony was committed. [1979 c 129 § 1; 1883 p 35 § 1; Code 1881 § 2106; RRS § 2228.]

10.46.230 Cost bills in felony cases—Payment. Upon the receipt of the cost bill, as provided for in the preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. On receipt of the certified copy of said cost bill, the administrator for the courts shall examine and audit said bill and allow the payment by the state of statutorily required witness fees in cases where conviction of a felony is obtained and the defendant is sentenced to pay a fine or is given a prison sentence even if the sentence is deferred or suspended. Payment shall be allowed by the administrator for the courts in such cases even when the conviction is subsequently reversed or if a new trial is granted. [1979 c 129 § 2; 1883 p 35 § 1; Code 1881 § 2107; 1873 p 250 § 316; RRS § 2229.]

Chapter 10.52

WITNESSES—GENERALLY

Sections

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|-----------|--|
| 10.52.040 | Compelling witness to attend and testify—Accused as witness. |
| 10.52.060 | Confrontation of witnesses. |
| 10.52.090 | Incriminating testimony not to be used. |

Discharging defendant to give evidence: RCW 10.46.110.

Salaried public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witnesses: Rules of court: ER 610, CrR 6.12, CrRLJ 6.12.

10.52.040 Compelling witness to attend and testify—Accused as witness. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may, upon the motion of the prosecuting attorney or defense counsel, recognize witnesses, with or without sureties, to attend and testify at any hearing or trial in any criminal prosecution in any court of this state, or before the grand jury. In default of such recognizance, or in the event that surety is required and has not been obtained, the court shall require the appearance of the witness before the court and shall appoint counsel for the witness if he is indigent and then shall determine that the testimony of the witness would be material to either the prosecution or the defendant and that the witness would not attend the trial of the matter unless detained and, therefore, the court may direct that such witness shall be detained in the custody of the sheriff until the hearing or trial in which the witness is to testify. *Provided,* That each witness detained for failure to obtain surety shall be paid, in addition to witness fees for actual appearance in court, for each day of his detention a sum equal to the daily jury fee paid to a juror serving in a superior court; and each witness in breach of recognizance and who is detained therefor shall be paid, in addition to witness fees for actual appearance in court, the sum of one dollar for each day of his detention. Any such witness shall be provided food and lodging while so detained. Any person accused of any crime in this state, by indictment, information, or otherwise, may, in the examination or trial of the cause, offer himself, or herself, as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examination of other witnesses. *Provided,* That nothing in this code shall be construed to compel such accused person to offer himself or herself as a witness in such case. [1984 c 76 § 17; 1969 ex.s. c 143 § 1; 1915 c 83 § 1; 1891 c 28 § 69; Code 1881 § 1067; 1873 p 233 § 229; 1871 p 105 § 2; 1854 p 116 § 93; RRS § 2148. Formerly RCW 10.52.040, 10.52.050, 10.52.070, 10.52.080.]

Rules of court: See CrR 6.13, 6.14.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

10.52.060 Confrontation of witnesses. Every person accused of crime shall have the right to meet the witnesses produced against him face to face: *Provided*, That whenever any witness whose deposition shall have been taken pursuant to law by a magistrate, in the presence of the defendant and his counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case. [1909 c 249 § 54; RRS § 2306. Prior: Code 1881 § 765; 1873 p 180 § 2; 1869 p 198 § 2; 1859 p 104 § 2.]

Reviser's note: Caption for 1909 c 249 § 54 reads as follows: "Sec. 54. *Witnesses.*"

Rights of accused persons: State Constitution Art. 1 § 22 (Amendment 10).

10.52.090 Incriminating testimony not to be used. In every case where it is provided in *this act that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate or subject him to a penalty or forfeiture; but he shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he shall so testify, except for perjury or offering false evidence committed in such testimony. [1909 c 249 § 39; RRS § 2291.]

***Reviser's note:** For meaning of "this act," see note following RCW 9.01.120.

Rules of court: Ordering immunity from prosecution—Incriminating testimony not to be used—CrR 6.14.

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

Witness not excused from giving testimony tending to incriminate himself in crimes concerning
abortion: RCW 9.02.040.
anarchy: RCW 9.05.050.
bribery: RCW 9.18.080.

Chapter 10.55

WITNESSES OUTSIDE THE STATE (UNIFORM ACT)

Sections	
10.55.010	Definitions.
10.55.020	Summoning witness in this state to testify in another state.
10.55.060	Witness from another state summoned to testify in this state.
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10.55.010 Definitions. "Witness" as used in this chapter shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and the District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness. [1943 c 218 § 1; Rem. Supp. 1943 § 2150-1.]

10.55.020 Summoning witness in this state to testify in another state. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certified under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence and of any other state through which the witness may be required to travel by ordinary course of travel, at a time and place specified in the certificate. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [1943 c 218 § 2; Rem. Supp. 1943 § 2150-2. Formerly RCW 10.55.020, 10.55.030, 10.55.040 and 10.55.050.]

10.55.060 Witness from another state summoned to testify in this state. If any person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness either for the prosecution or for the defense, in a criminal action pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. [1943 c 218 § 3; Rem. Supp. 1943 § 2150-3. Formerly RCW 10.55.060, 10.55.070, 10.55-.080 and 10.55.090.]

10.55.100 Exemption of witness from arrest and service of process. If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. [1943 c 218 § 4; Rem. Supp. 1943 § 2150-4.]

10.55.110 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. [1943 c 218 § 5; Rem. Supp. 1943 § 2150-5.]

10.55.120 Short title. This chapter may be cited as "Uniform Act to Secure the Attendance of Witnesses

from Without a State in Criminal Proceedings." [1943 c 218 § 6; Rem. Supp. 1943 § 2150-6.]

10.55.130 Severability—1943 c 218. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1943 c 218 § 7; Rem. Supp. 1943 § 2150-7.]

Chapter 10.58 EVIDENCE

Sections

10.58.010	Rules—Generally.
10.58.020	Presumption of innocence—Conviction of lowest degree, when.
10.58.030	Confession as evidence.
10.58.040	Intent to defraud.
10.58.060	Ownership—Proof of.
10.58.080	View of place of crime permissible.

Evidence

generally: Title 5 RCW.

material to homicide, search and seizure: RCW 10.79.015.

10.58.010 Rules—Generally. The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions. [Code 1881 § 1071; 1873 p 234 § 233; 1854 p 117 § 97; RRS § 2152.]

10.58.020 Presumption of innocence—Conviction of lowest degree, when. Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. [1909 c 249 § 56; 1891 c 28 § 91; Code 1881 § 767; 1854 p 76 § 3; RRS § 2308. Formerly RCW 10.58.020 and 10.61.020.]

Conviction of attempts or lesser or included crimes: RCW 10.61.003, 10.61.006, 10.61.010.

10.58.030 Confession as evidence. The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony. [Code 1881 § 1070; 1873 p 234 § 232; 1854 p 117 § 96; RRS § 2151.]

10.58.040 Intent to defraud. Whenever an intent to defraud shall be made an element of an offense, it shall be sufficient if an intent appears to defraud any person, association or body politic or corporate whatsoever. [1909 c 249 § 40; RRS § 2292.]

10.58.060 Ownership—Proof of. In the prosecution of any offense committed upon, or in relation to, or

in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on trial that at the time when such offense was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof. [Code 1881 § 963; 1854 p 99 § 133; RRS § 2156.]

Indictment or information, certain defects or imperfections deemed immaterial: RCW 10.37.056.

10.58.080 View of place of crime permissible. The court may order a view by any jury impaneled to try a criminal case. [Code 1881 § 1090; 1873 p 237 § 251; 1854 p 120 § 115; RRS § 2160.]

Chapter 10.61 VERDICTS

Sections	
10.61.003	Degree offenses—Inferior degree—Attempt.
10.61.006	Other cases—Included offenses.
10.61.010	Conviction of lesser crime.
10.61.035	Conviction or acquittal—Several defendants.
10.61.060	Reconsideration of verdict.

Rules of court: Verdicts—CrR 6.16.

Former acquittal or conviction—Offense embraces other degrees and included offenses: RCW 10.43.020, 10.43.050.

10.61.003 Degree offenses—Inferior degree—Attempt. Upon an indictment or information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense. [1891 c 28 § 75; Code 1881 § 1097; 1854 p 120 § 122; RRS § 2167. Formerly RCW 10.61.010, part.] [SLC-RO-11]

Where doubt as to degree, conviction of lowest: RCW 10.58.020.

10.61.006 Other cases—Included offenses. In all other cases the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information. [1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168. Formerly RCW 10.61.010, part.] [SLC-RO-11]

10.61.010 Conviction of lesser crime. Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty. [1909 c 249 § 11; RRS § 2263.

FORMER PARTS OF SECTION: (i) 1891 c 28 § 75; Code 1881 § 1097; 1854 p 120 § 122; RRS § 2167, now codified as RCW 10.61.003. (ii) 1891 c 28 § 76; Code 1881 § 1098; 1854 p 120 § 123; RRS § 2168, now codified as RCW 10.61.006.] [SLC-RO-11]

10.61.035 Conviction or acquittal—Several defendants. Upon an indictment or information against several defendants any one or more may be convicted or acquitted. [1891 c 28 § 37; Code 1881 § 1022; 1873 p 228 § 205; 1869 p 243 § 200; RRS § 2073. Formerly RCW 10.61.030, part.]

Rules of court: This section superseded in part by CrR 6.16. See comment after CrR 6.16.

Discharging defendant to give evidence: RCW 10.46.110.

10.61.060 Reconsideration of verdict. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider the verdict; and if after such reconsideration they return the same verdict it must be entered, but it shall be good cause for new trial. When there is a verdict of acquittal the court cannot require the jury to reconsider it. [1891 c 28 § 78; Code 1881 § 1100; 1873 p 239 § 261; 1854 p 121 § 125; RRS § 2170.]

Chapter 10.64 JUDGMENTS AND SENTENCES

Sections	
10.64.015	Judgment to include costs—Exception.
10.64.060	Form of sentence to penitentiary.
10.64.070	Recognizance to maintain good behavior or keep the peace.
10.64.075	Breach of recognizance conditions.
10.64.080	Judgments a lien on realty.
10.64.100	Final record—What to contain.
10.64.110	Fingerprint of defendant in felony convictions.
10.64.120	Misdemeanant assessments.

Rules of court: Judgments and sentencing—CrR 7.1 through 7.4.

Assessments required of other convicted persons

parolees: RCW 72.04A.120.

probationers: RCW 9.94A.270.

Excessive bail or fines, cruel punishment prohibited: State Constitution Art. 1 § 14.

10.64.015 Judgment to include costs—Exception. When the defendant is found guilty, the court shall render judgment accordingly, and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise. [Code 1881 § 1104; 1873 p 241 § 272; 1854 p 121 § 129; RRS § 2187. Formerly RCW 10.64.010, part.]

Requiring defendant to pay costs—Procedure: RCW 10.01.160, 10.01.170, chapter 10.82 RCW.

10.64.060 Form of sentence to penitentiary. In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for

such term as the court shall direct, not exceeding twenty days at any one time; and in the execution of such punishment the solitary shall precede the punishment by hard labor, unless the court shall otherwise order. [Code 1881 § 1127; 1873 p 243 § 285; 1854 p 124 § 149; RRS § 2208.]

*Indeterminate sentences: Chapter 9.95 RCW.
Sentencing, 1981 act: Chapter 9.94A RCW.*

10.64.070 Recognizance to maintain good behavior or keep the peace. Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize. [1891 c 28 § 83; Code 1881 § 1121; 1873 p 242 § 279; 1854 p 123 § 143; RRS § 2202. FORMER PART OF SECTION: Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203, now codified as RCW 10.64.075.]

Proceedings to keep the peace: Chapter 10.13 RCW.

10.64.075 Breach of recognizance conditions. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace. [Code 1881 § 1122; 1873 p 242 § 280; 1854 p 123 § 144; RRS § 2203. Formerly RCW 10.64.070, part.]

10.64.080 Judgments a lien on realty. Judgments for fines in all criminal actions rendered, are, and may be made liens upon the real estate of the defendant in the same manner, and with like effect as judgments in civil actions. [Code 1881 § 1111; RRS § 2188.]

10.64.100 Final record—What to contain. The clerk of the court shall make a final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment or information, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions. [1891 c 28 § 85; Code 1881 § 1134; 1873 p 245 § 292; 1854 p 125 § 156; RRS § 2224.]

10.64.110 Fingerprint of defendant in felony convictions. Following June 15, 1977, there shall be affixed to the original of every judgment and sentence of a felony conviction in every court in this state and every order adjudicating a juvenile to be a delinquent based upon conduct which would be a felony if committed by an adult, a fingerprint of the defendant or juvenile who is the subject of the order. When requested by the clerk of the court, the actual affixing of fingerprints shall be done by a representative of the office of the county sheriff.

The clerk of the court shall attest that the fingerprints appearing on the judgment in sentence, order of adjudication of delinquency, or docket, is that of the individual who is the subject of the judgment or conviction, order, or docket entry. [1977 ex.s. c 259 § 1.]

10.64.120 Misdemeanant assessments. (1) Every judge of a court of limited jurisdiction shall have the authority to levy upon each misdemeanor a monthly assessment not to exceed fifty dollars for services provided whenever such a person is referred by the court to the misdemeanor probation department for evaluation or supervision services. The assessment may also be made by a sentencing judge in superior court when such misdemeanor or gross misdemeanor cases are heard in the superior court.

(2) It shall be the responsibility of the misdemeanor probation services office to implement local procedures approved by the court of limited jurisdiction to ensure collection and payment of such fees into the general fund of the city or county treasury.

(3) Revenues raised under this section shall be used to fund programs for misdemeanor probation services and shall be in addition to those funds provided in RCW 3.62.050. [1982 c 207 § 4.]

Chapter 10.70

COMMITMENTS

(Formerly: Commitments and executions)

Sections

10.70.010	Commitment until fine and costs are paid.
10.70.020	Mittimus upon sentence to imprisonment.
10.70.140	Aliens committed—Notice to immigration authority.
10.70.150	Aliens committed—Copies of clerk's records.

Execution of death sentence: Chapter 10.95 RCW.

10.70.010 Commitment until fine and costs are paid. When the defendant is adjudged to pay a fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law. [Code 1881 § 1119; 1873 p 242 § 277; 1854 p 123 § 141; RRS § 2200.]

Commitment for failure to pay fine and costs—Execution against defendant's property: RCW 10.82.030.

Stay of execution for sixty days on recognizance: RCW 10.82.020, 10.82.025.

10.70.020 Mittimus upon sentence to imprisonment. When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly. [Code 1881 § 1126; 1873 p 243 § 284; 1854 p 124 § 148; RRS § 2207.]

10.70.140 Aliens committed—Notice to immigration authority. Whenever any person shall be committed

to the state penitentiary, the state reformatory, the county jail or any other state or county institution which is supported wholly or in part by public funds, it shall be the duty of the warden, superintendent, sheriff or other officer in charge of such state or county institution to at once inquire into the nationality of such person, and if it shall appear that such person is an alien, to immediately notify the United States immigration officer in charge of the district in which such penitentiary, reformatory, jail or other institution is located, of the date of and the reasons for such alien commitment, the length of time for which committed, the country of which he is a citizen, and the date on which and the port at which he last entered the United States. [1925 ex.s. c 169 § 1; RRS § 2206-1.]

10.70.150 Aliens committed—Copies of clerk's records. Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing any alien to any state or county institution which is supported wholly or in part by public funds, it shall be the duty of the clerk of such court to furnish without charge a certified copy of the complaint, information or indictment and the judgment and sentence and any other record pertaining to the case of the convicted alien. [1925 ex.s. c 169 § 2; RRS § 2206-2.]

Chapter 10.73 CRIMINAL APPEALS

Sections

10.73.010 Appeal by defendant.
10.73.040 Bail pending appeal.

Effect of appeal by defendant: RCW 9.95.060, 9.95.062.

10.73.010 Appeal by defendant. Appeal by defendant, see Rules of Court, Volume 0.

10.73.040 Bail pending appeal. In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds by *section ten of this act, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may by order require a new bond in a

larger amount or with new sureties, and may commit the appellant until the order be complied with. [1893 c 61 § 31; RRS § 1747.]

***Reviser's note:** The term "section ten of this act," refers to 1893 c 61 § 10, which was repealed by 1957 c 7 § 10.

Chapter 10.77

CRIMINALLY INSANE—PROCEDURES

Sections

10.77.010 Definitions.
10.77.020 Right to legal counsel—Waiver—Finding—Right to expert and attorney when subjected to mental status examination—Indigents—Order of commitment or treatment—Self-incrimination.
10.77.030 Evidence of insanity—Admissibility—Evidence required to establish as a defense.
10.77.040 Instructions to jury on special verdict.
10.77.050 Trial, conviction, or sentencing of person under mental incapacity.
10.77.060 Plea of not guilty due to insanity—Doubt as to competency—Examination—Report.
10.77.070 Examination rights of defendant's expert or professional person.
10.77.080 Motion for acquittal on grounds of insanity—Hearing—Findings.
10.77.090 Stay of proceedings on grounds of incompetency where felony charged—Commitment—Findings—Extensions of commitment period—Alternative procedures—Procedure where crime charged is not a felony.
10.77.100 Experts or professional persons as witnesses.
10.77.110 Acquittal of felony—Discharge, hospitalization, conditional release—Acquittal of nonfelony—Release or custody for evaluation.
10.77.120 Confinement of committed person—Custody—Hearings—Discharge.
10.77.130 Statement of facts or bill of exceptions as part of record.
10.77.140 Periodic examinations—Reports—Notice to court.
10.77.150 Conditional release—Application—Procedure.
10.77.160 Conditional release—Reports as to adherence to terms and conditions of release.
10.77.163 Furlough—Notice to law enforcement agencies.
10.77.165 Escape or disappearance—Notification requirements.
10.77.170 Payments to conditionally released persons.
10.77.180 Conditional release—Periodic review of case.
10.77.190 Conditional release—Modification of terms—Procedure.
10.77.200 Final discharge—Procedure.
10.77.210 Right to adequate care and treatment—Records and reports to be kept—Availability.
10.77.220 Incarceration in correctional institution or facility prohibited—Exceptions.
10.77.230 Appeals.
10.77.240 Existing rights not affected.
10.77.250 Responsibility for costs—Reimbursement.
10.77.900 Savings—Construction—1973 1st ex.s. c 117.
10.77.910 Severability—1973 1st ex.s. c 117.
10.77.920 Chapter successor to chapter 10.76 RCW.
10.77.930 Effective date—1973 1st ex.s. c 117.

Rules of court: Cf. CrR 4.2(c).

Mentally ill, commitment: Chapter 71.05 RCW.

10.77.010 Definitions. As used in this chapter:

(1) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing felonious acts jeopardizing public safety or

security unless kept under further control by the court or other persons or institutions.

(2) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to himself or his family.

(3) "Secretary" means the secretary of the department of social and health services or his designee.

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

(5) "Treatment" means any currently standardized medical or mental health procedure including medication.

(6) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or to assist in his own defense as a result of mental disease or defect.

(7) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute "insanity".

(8) "Furlough" means an authorized leave of absence for a resident of a state institution designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave. [1983 c 122 § 1; 1974 ex.s. c 198 § 1; 1973 1st ex.s. c 117 § 1.]

10.77.020 Right to legal counsel—Waiver—

Finding—Right to expert and attorney when subjected to mental status examination—Indigents—Order of commitment or treatment—Self-incrimination. (1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him. A person may waive his right to counsel; but such waiver shall only be effective if a court makes a specific finding that he is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

- (a) The nature of the charges;
- (b) The statutory offense included within them;
- (c) The range of allowable punishments thereunder;
- (d) Possible defenses to the charges and circumstances in mitigation thereof; and
- (e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he may retain an expert or professional person to perform an examination in his behalf. In the case of a person who is indigent, the court shall upon his request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his

behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his services out of funds of the department, in an amount determined by it to be fair and reasonable.

(3) Whenever any person has been committed under any provision of this chapter, or ordered to undergo alternative treatment following his acquittal of a crime charged by reason of insanity, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which he was acquitted by reason of insanity. If at the end of that period the person has not been finally discharged and is still in need of commitment or treatment, civil commitment proceedings may be instituted, if appropriate.

(4) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, he shall be entitled to have his attorney present. The defendant may refuse to answer any question if he believes his answers may tend to incriminate him or form links leading to evidence of an incriminating nature. [1974 ex.s. c 198 § 2; 1973 1st ex.s. c 117 § 2.]

10.77.030 Evidence of insanity—Admissibility—

Evidence required to establish as a defense. (1) Evidence of insanity is not admissible unless the defendant, at the time of arraignment or within ten days thereafter or at such later time as the court may for good cause permit, files a written notice of his intent to rely on such a defense.

(2) Insanity is a defense which the defendant must establish by a preponderance of the evidence. [1974 ex.s. c 198 § 3; 1973 1st ex.s. c 117 § 3.]

10.77.040 Instructions to jury on special verdict.

Whenever the issue of insanity is submitted to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

- | | answer
yes or no |
|--|---------------------|
| 1. Did the defendant commit the act charged? | ----- |
| 2. If your answer to number 1 is yes, do you acquit him because of insanity existing at the time of the act charged? | ----- |
| 3. If your answer to number 2 is yes, is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions? | ----- |
| 4. If your answer to number 2 is yes, does the defendant present a substantial likelihood of committing felonious acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions? | ----- |

answer
yes or no

5. If your answers to either number 3 or number 4 is yes, is it in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital? -----

[1974 ex.s. c 198 § 4; 1973 1st ex.s. c 117 § 4.]

10.77.050 Trial, conviction, or sentencing of person under mental incapacity. No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues. [1974 ex.s. c 198 § 5; 1973 1st ex.s. c 117 § 5.]

10.77.060 Plea of not guilty due to insanity—Doubt as to competency—Examination—Report.

(1) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. For purposes of the examination, the court may order the defendant committed to a hospital or other suitable facility for a period of time necessary to complete the examination, but not to exceed fifteen days.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the examination authorized by subsection (1) of this section, and that he shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the mental condition of the defendant;
- (c) If the defendant suffers from a mental disease or defect, an opinion as to his competency;
- (d) If the defendant has indicated his intention to rely on the defense of insanity pursuant to RCW 10.77.030, an opinion as to the defendant's sanity at the time of the act;
- (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions. [1974 ex.s. c 198 § 6; 1973 1st ex.s. c 117 § 6.]

10.77.070 Examination rights of defendant's expert or professional person. When the defendant wishes to be examined by a qualified expert or professional person of his own choice such examiner shall be permitted to have reasonable access to the defendant for the purpose of such examination, as well as to all relevant medical and psychological records and reports. [1973 1st ex.s. c 117 § 7.]

10.77.080 Motion for acquittal on grounds of insanity—Hearing—Findings. The defendant may move the court for a judgment of acquittal on the grounds of insanity: *Provided*, That a defendant so acquitted may not later contest the validity of his detention on the grounds that he did not commit the acts charged. At the hearing upon said motion the defendant shall have the burden of proving by a preponderance of the evidence that he was insane at the time of the offense or offenses with which he is charged. If the court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings in substantially the same form as set forth in RCW 10.77.040 as now or hereafter amended. If the motion is denied, the question may be submitted to the trier of fact in the same manner as other issues of fact. [1974 ex.s. c 198 § 7; 1973 1st ex.s. c 117 § 8.]

10.77.090 Stay of proceedings on grounds of incompetency where felony charged—Commitment—Findings—Extensions of commitment period—Alternative procedures—Procedure where crime charged is not a felony. (1) If at any time during the pendency of an action and prior to judgment, the court finds following a report as provided in RCW 10.77.060, as now or hereafter amended, that the defendant is incompetent, the court shall order the proceedings against him be stayed, except as provided in subsection (5) of this section, and, if the defendant is charged with a felony, may commit the defendant to the custody of the secretary, who shall place such defendant in an appropriate facility of the department for evaluation and treatment, or the court may alternatively order the defendant to undergo evaluation and treatment at some other facility, or under the guidance and control of some other person, until he has regained the competency necessary to understand the proceedings against him and assist in his own defense, but in any event, for no longer than a period of ninety days. A copy of the report shall be sent to the facility. On or before expiration of the initial ninety day period of commitment the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent. If the defendant is charged with a crime which is not a felony, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the county mental health professional to evaluate the defendant and commence proceedings under chapter 71.05 RCW if appropriate; and subsections (2) and (3) of this section shall not be applicable: *Provided*, That, upon order of the court, the prosecutor may directly petition for fourteen days of involuntary treatment under chapter 71.05 RCW.

(2) If the court finds by a preponderance of the evidence that the defendant is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety day period, but it must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second ninety day period. The defendant, his attorney, the prosecutor, or the judge shall have the right to demand that the hearing on or before the expiration of the second ninety day period be before a jury. If no demand is made, the hearing shall be before the court. The court or jury shall determine whether or not the defendant has become competent.

(3) At the hearing upon the expiration of the second ninety day period if the jury or court, as the case may be, finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted, if appropriate, or the court shall order the release of the defendant: *Provided*, That the criminal charges shall not be dismissed if at the end of the second ninety day period the court or jury finds that the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, and that there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for an additional six months. At the end of said six month period, if the defendant remains incompetent, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted, if appropriate, or the court shall order release of the defendant.

(4) The fact that the defendant is unfit to proceed does not preclude any pretrial proceedings which do not require the personal participation of the defendant.

(5) A defendant receiving medication for either physical or mental problems shall not be prohibited from standing trial, if the medication either enables him to understand the proceedings against him and to assist in his own defense, or does not disable him from so understanding and assisting in his own defense.

(6) At or before the conclusion of any commitment period provided for by this section, the facility providing evaluation and treatment shall provide to the court a written report of examination which meets the requirements of RCW 10.77.060(3). [1979 ex.s. c 215 § 3; 1974 ex.s. c 198 § 8; 1973 1st ex.s. c 117 § 9.]

10.77.100 Experts or professional persons as witnesses. Subject to the rules of evidence, experts or professional persons who have reported pursuant to this chapter may be called as witnesses at any proceeding held pursuant to this chapter. Both the prosecution and the defendant may summon any other qualified expert or professional persons to testify. [1974 ex.s. c 198 § 9; 1973 1st ex.s. c 117 § 10.]

10.77.110 Acquittal of felony—Discharge, hospitalization, conditional release—Acquittal of nonfelony—Release or custody for evaluation. If a defendant is acquitted of a felony by reason of insanity, and it is found that he is not a substantial danger to other persons, and does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct his final discharge. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter. If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing felonious acts jeopardizing public safety or security, but that he is in need of control by the court or other persons or institutions, the court shall direct his conditional release. If the defendant is acquitted by reason of insanity of a crime which is not a felony, the court shall order the defendant's release or order the defendant's continued custody only for a reasonable time to allow the county-designated mental-health professional to evaluate the individual and to proceed with civil commitment pursuant to chapter 71.05 RCW, if considered appropriate. [1983 c 25 § 1; 1979 ex.s. c 215 § 4; 1974 ex.s. c 198 § 10; 1973 1st ex.s. c 117 § 11.]

10.77.120 Confinement of committed person—Custody—Hearings—Discharge. The secretary shall forthwith provide adequate care and individualized treatment at one or several of the state institutions or facilities under his direction and control wherein persons committed as criminally insane may be confined. Such persons shall be under the custody and control of the secretary to the same extent as are other persons who are committed to his custody, but such provision shall be made for their control, care, and treatment as is proper in view of their condition. In order that the secretary may adequately determine the nature of the mental illness of the person committed to him as criminally insane, and in order for the secretary to place such individuals in a proper facility, all persons who are committed to the secretary as criminally insane shall be promptly examined by qualified personnel in such a manner as to provide a proper evaluation and diagnosis of such individual. Any person so committed shall not be discharged from the control of the secretary save upon the order of a court of competent jurisdiction made after a hearing and judgment of discharge.

Whenever there is a hearing which the committed person is entitled to attend, the secretary shall send him in the custody of one or more department employees to the county where the hearing is to be held at the time the case is called for trial. During the time he is absent

from the facility, he shall be confined in a facility designated by and arranged for by the department, and shall at all times be deemed to be in the custody of the department employee and provided necessary treatment. If the decision of the hearing remits the person to custody, the department employee shall forthwith return him to such institution or facility designated by the secretary. If the state appeals an order of discharge, such appeal shall operate as a stay, and the person in custody shall so remain and be forthwith returned to the institution or facility designated by the secretary until a final decision has been rendered in the cause. [1974 ex.s. c 198 § 11; 1973 1st ex.s. c 117 § 12.]

10.77.130 Statement of facts or bill of exceptions as part of record. Either party to the cause may have the evidence and all of the matters not of record in the cause made a part of the record by the certification of a statement of facts or bill of exceptions as in other cases. If an appeal should not be taken, such statement of facts or bill of exceptions shall remain on file in the office of the clerk of the court where the cause was tried, and if an appeal be taken, the statement of facts or bill of exceptions shall be returned from the court of appeals or the supreme court to the court where the cause was tried when the court of appeals or the supreme court shall have rendered its final judgment in the cause. [1973 1st ex.s. c 117 § 13.]

Rules of court: Cf. RAP 9.1, 18.22.

10.77.140 Periodic examinations—Reports—Notice to court. Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his mental condition made by one or more experts or professional persons at least once every six months. Said person may retain, or if he is indigent and so requests, the court may appoint a qualified expert or professional person to examine him, and such expert or professional person shall have access to all hospital records concerning the person. The secretary, upon receipt of the periodic report, shall provide written notice to the court of commitment of compliance with the requirements of this section. [1974 ex.s. c 198 § 12; 1973 1st ex.s. c 117 § 14.]

10.77.150 Conditional release—Application—Procedure. (1) Persons examined pursuant to RCW 10.77.140, as now or hereafter amended, may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered his commitment the person's application for conditional release as well as his recommendations concerning the application and any proposed terms and conditions upon which he reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) The court of the county which ordered his commitment, upon receipt of an application for conditional

release with the secretary's recommendation for conditional release, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary. The prosecuting attorney shall represent the state at such hearings and shall have the right to have the patient examined by an expert or professional person of his choice. If the committed person is indigent, and he so requests, the court shall appoint a qualified expert or professional person to examine him on his behalf. The issue to be determined at such a hearing is whether or not the person may be released conditionally without substantial danger to other persons, or substantial likelihood of committing felonious acts jeopardizing public safety or security. The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so only on the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary.

(3) If the court determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him to report to a physician or other person for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other person shall immediately upon the released person's failure to appear for the medication or treatment report the failure to the court and to the prosecuting attorney of the county in which the released person was committed.

(4) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial. [1982 c 112 § 1; 1974 ex.s. c 198 § 13; 1973 1st ex.s. c 117 § 15.]

10.77.160 Conditional release—Reports as to adherence to terms and conditions of release. When a conditionally released person is required by the terms of his conditional release to report to a physician, probation officer, or other such person on a regular or periodic basis, the doctor, probation officer, or other such person shall monthly, or as otherwise directed by the court, submit to the court, the secretary, the institution from which released, and to the prosecuting attorney of the county in which the person was committed, a report stating whether the person is adhering to the terms and conditions of his conditional release. [1973 1st ex.s. c 117 § 16.]

10.77.163 Furlough—Notice to law enforcement agencies. The superintendent of each state institution designated for the custody, care, and treatment of the criminally insane shall notify appropriate law enforcement agencies through the state patrol communications network of the furloughs of persons committed under RCW 10.77.090 or 10.77.110. Notification shall be

made at least forty-eight hours before the furlough, and shall include the name of the person, the place to which the person has permission to go, and the dates and times during which the person will be on furlough. For emergency furloughs, forty-eight hours notice is not required, but notice shall be made before the departure. [1983 c 122 § 2.]

10.77.165 Escape or disappearance—Notification requirements. In the event of an escape by a criminally insane person from a state institution or the disappearance of such a person on conditional release, the superintendent shall notify as appropriate, local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. [1983 c 122 § 3.]

10.77.170 Payments to conditionally released persons. As funds are available, the secretary may provide payment to a person conditionally released pursuant to RCW 10.77.150, consistent with the provisions of RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so. [1973 1st ex.s. c 117 § 17.]

10.77.180 Conditional release—Periodic review of case. Each person conditionally released pursuant to RCW 10.77.150, as now or hereafter amended, shall have his case reviewed by the court which conditionally released him no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the court. Review may occur in a shorter time or more frequently, if the court, in its discretion, on its own motion, or on motion of the person, the secretary or the prosecuting attorney, so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released. The court in making its determination shall be aided by the periodic reports filed pursuant to RCW 10.77.140, as now or hereafter amended, and RCW 10.77.160, and the opinions of the secretary and other experts or professional persons. [1974 ex.s. c 198 § 14; 1973 1st ex.s. c 117 § 18.]

10.77.190 Conditional release—Modification of terms—Procedure. (1) Any person submitting reports pursuant to RCW 10.77.160, the secretary, or the prosecuting attorney may petition the court to, or the court on its own motion may schedule an immediate hearing for the purpose of modifying the terms of conditional release if the petitioner or the court believes the released person is failing to adhere to the terms and conditions of his conditional release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the secretary, or the court, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and

conditions of his conditional release the court or secretary may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of the apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court or secretary shall, upon request, assist him in obtaining a qualified expert or professional person to conduct the examination.

(3) The court, upon receiving notification of the apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his release. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his conditional release shall be revoked and he shall be committed subject to release only in accordance with provisions of this chapter. [1982 c 112 § 2; 1974 ex.s. c 198 § 15; 1973 1st ex.s. c 117 § 19.]

10.77.200 Final discharge—Procedure. (1) Upon application by the criminally insane or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for final discharge. If the secretary approves the final discharge he then shall authorize said person to petition the court.

(2) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for final discharge, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of his choice. If the petitioner is indigent, and he so requests, the court shall appoint a qualified expert or professional person to examine him. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the petitioner may be finally discharged without substantial danger to other persons, and without presenting a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(3) Nothing contained in this chapter shall prohibit the patient from petitioning the court for final discharge or conditional release from the institution in which he or she is committed. The issue to be determined on such proceeding is whether the petitioner is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus. [1983 c 25 § 2; 1974 ex.s. c 198 § 16; 1973 1st ex.s. c 117 § 20.]

10.77.210 Right to adequate care and treatment—Records and reports to be kept—Availability. Any person involuntarily detained, hospitalized, or committed pursuant to the provisions of this chapter shall have the right to adequate care and individualized treatment. The person who has custody of the patient or is in charge of treatment shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations of the patient that have been filed with the secretary pursuant to this chapter. All records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his attorney, to his personal physician, to the prosecuting attorney, to the court or other expert or professional persons who, upon proper showing, demonstrates a need for access to such records. All records and reports made pursuant to this chapter shall also be made available, upon request, to the department of corrections or the board of prison terms and paroles if the person was on parole or probation at the time of detention, hospitalization, or commitment or the person is subsequently convicted for the crime for which they were detained, hospitalized, or committed pursuant to this chapter. [1983 c 196 § 3; 1973 1st ex.s. c 117 § 21.]

10.77.220 Incarceration in correctional institution or facility prohibited—Exceptions. No person confined pursuant to this chapter shall be incarcerated in a state correctional institution or facility: *Provided*, That nothing herein shall prohibit confinement in a mental health facility located wholly within a correctional institution. Confinement in a county jail or other local facility while awaiting either placement in a treatment program or a court hearing pursuant to this chapter is permitted for no more than seven days. [1982 c 112 § 3; 1974 ex.s. c 198 § 17; 1973 1st ex.s. c 117 § 22.]

10.77.230 Appeals. Either party may appeal to the court of appeals the judgment of any hearing held pursuant to the provisions of this chapter. [1974 ex.s. c 198 § 18; 1973 1st ex.s. c 117 § 23.]

Rules of court: Cf. RAP 2.2, 18.22.

10.77.240 Existing rights not affected. Nothing in this chapter shall prohibit a person presently committed from exercising a right presently available to him for obtaining release from confinement, including the right to petition for a writ of habeas corpus. [1973 1st ex.s. c 117 § 24.]

10.77.250 Responsibility for costs—Reimbursement. The department shall be responsible for all costs relating to the evaluation and treatment of persons committed to it pursuant to any provisions of this chapter, and the logistical and supportive services pertaining

thereto. Reimbursement may be obtained by the department pursuant to RCW 43.20B.330. [1987 c 75 § 1; 1985 c 245 § 1; 1973 1st ex.s. c 117 § 25.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

10.77.900 Savings—Construction—1973 1st ex.s. c 117. (1) Any acts done before July 1, 1973 and any proceedings then pending and any constitutional right or any action taken in any proceeding pending under statutes in effect prior to July 1, 1973 are not impaired by this chapter.

(2) This chapter shall also apply to persons committed under prior law as incompetent to stand trial or as being criminally insane and to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedures of this chapter. [1973 1st ex.s. c 117 § 26.]

10.77.910 Severability—1973 1st ex.s. c 117. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or its application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 117 § 27.]

10.77.920 Chapter successor to chapter 10.76 RCW. Sections 1 through 27 of this act shall constitute a new chapter in Title 10 RCW, and shall be considered the successor chapter to chapter 10.76 RCW. [1973 1st ex.s. c 117 § 28.]

10.77.930 Effective date—1973 1st ex.s. c 117. This act shall take effect on July 1, 1973. [1973 1st ex.s. c 117 § 30.]

Chapter 10.79

SEARCHES AND SEIZURES

Sections

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10.79.015 Other grounds for issuance of search warrant. Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

(1) To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

(2) To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

(3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony: *Provided*, That if the evidence is sought to be secured from any radio or television station or from any regularly published newspaper, magazine or wire service, or from any employee of such station, wire service or publication, the evidence shall be secured only through a subpoena duces tecum unless: (a) There is probable cause to believe that the person or persons in possession of the evidence may be involved in the crime under investigation; or (b) there is probable cause to believe that the evidence sought to be seized will be destroyed or hidden if subpoena duces tecum procedures are followed. As used in this subsection, "person or persons" includes both natural and judicial persons.

(4) To search for and seize any instrument, apparatus or device used to obtain telephone or telegraph service in violation of RCW 9.45.240. [1980 c 52 § 1; 1972 ex.s. c 75 § 2; 1969 c 83 § 1; 1949 c 86 § 1; Code 1881 § 986; 1873 p 216 § 154; 1854 p 101 § 2; Rem. Supp. 1949 § 2238. Formerly RCW 10.79.010, part.]

10.79.020 To whom directed—Contents. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property, or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case. [Code 1881 § 969; 1873 p 216 § 155; 1854 p 101 § 3; RRS § 2239.]

10.79.040 Search without warrant unlawful. It shall be unlawful for any policeman or other peace officer to enter and search any private dwelling house or place of residence without the authority of a search warrant issued upon a complaint as by law provided. [1921 c 71 § 1; RRS § 2240-1. FORMER PART OF SECTION: 1921 c 71 § 2; RRS § 2240-2, now codified as RCW 10.79.045.]

10.79.045 Search without warrant unlawful—Penalty. Any policeman or other peace officer violating the provisions of RCW 10.79.040 shall be guilty of a gross misdemeanor. [1921 c 71 § 2; RRS § 2240-2. Formerly RCW 10.79.040, part.]

10.79.050 Restoration of stolen property to owner—Duties of officers. All property obtained by larceny, robbery or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant. [Code 1881 § 851; 1873 p 192 § 57; 1854 p 84 § 51; RRS § 2129.]

10.79.060 Strip, body cavity searches—Legislative intent. It is the intent of the legislature to establish policies regarding the practice of strip searching persons booked into holding, detention, or local correctional facilities. It is the intent of the legislature to restrict the practice of strip searching and body cavity searching persons booked into holding, detention, or local correctional facilities to those situations where such searches are necessary. [1983 1st ex.s. c 42 § 1.]

Effective date—1983 1st ex.s. c 42: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983." [1983 1st ex.s. c 42 § 10.]

Severability—1983 1st ex.s. c 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." [1983 1st ex.s. c 42 § 9.]

10.79.070 Strip, body cavity searches—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 10.79-.060 through 10.79.110.

(1) "Strip search" means having a person remove or arrange some or all of his or her clothing so as to permit an inspection of the genitals, buttocks, anus, or undergarments of the person or breasts of a female person.

(2) "Body cavity search" means the touching or probing of a person's body cavity, whether or not there is actual penetration of the body cavity.

(3) "Body cavity" means the stomach or rectum of a person and the vagina of a female person.

(4) "Law enforcement agency" and "law enforcement officer" include local departments of corrections created

pursuant to RCW 70.48.090(3) and employees thereof. [1983 1st ex.s. c 42 § 2.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.080 Strip, body cavity searches—Warrant, authorization, report. (1) No person may be subjected to a body cavity search by or at the direction of a law enforcement agency unless a search warrant is issued pursuant to superior court criminal rules.

(2) No law enforcement officer may seek a warrant for a body cavity search without first obtaining specific authorization for the body cavity search from the ranking shift supervisor of the law enforcement authority. Authorization for the body cavity search may be obtained electronically: *Provided*, That such electronic authorization shall be reduced to writing by the law enforcement officer seeking the authorization and signed by the ranking supervisor as soon as possible thereafter.

(3) Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, security, or evidentiary concerns of the law enforcement agency.

(4) A law enforcement officer requesting a body cavity search shall prepare and sign a report regarding the body cavity search. The report shall include:

(a) A copy of the written authorization required under subsection (2) of this section;

(b) A copy of the warrant and any supporting documents required under subsection (1) of this section;

(c) The name and sex of all persons conducting or observing the search;

(d) The time, date, place, and description of the search; and

(e) A statement of the results of the search and a list of any items removed from the person as a result of the search.

The report shall be retained as part of the law enforcement agency's records. [1983 1st ex.s. c 42 § 3.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.090 Strip, body cavity searches—Medical care not precluded. Nothing in RCW 10.79.080 or this section may be construed as precluding or preventing the administration of medical care to persons requiring immediate medical care or requesting medical care. [1983 1st ex.s. c 42 § 4.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.100 Strip, body cavity searches—Standards for conducting. (1) Persons conducting a strip search

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shall not touch the person being searched except as reasonably necessary to effectuate the strip search of the person.

(2) Any body cavity search must be performed under sanitary conditions and conducted by a physician, registered nurse, or physician's assistant, licensed to practice in this state, who is trained in the proper medical process and the potential health problems associated with a body cavity search. No health professional authorized by this subsection to conduct a body cavity search shall be held liable in any civil action if the search is conducted in a manner that meets the standards and requirements of RCW 4.24.290 and 7.70.040.

(3) Except as provided in subsection (7) of this section, a strip search or body cavity search, as well as presearch undressing or postsearch dressing, shall occur at a location made private from the observation of persons not physically conducting the search. A strip search or body cavity search shall be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals as required by subsection (2) of this section.

(4) Except as provided in subsection (5) of this section, no person may be present or observe during the search unless the person is necessary to conduct the search or to ensure the safety of those persons conducting the search.

(5) Nothing in this section prohibits a person upon whom a body cavity search is to be performed from having a readily available person of his or her choosing present at the time the search is conducted. However, the person chosen shall not be a person being held in custody by a law enforcement agency.

(6) RCW 10.79.080 and this section shall not be interpreted as expanding or diminishing the authority of a law enforcement officer with respect to searches incident to arrest or investigatory stop in public.

(7) A strip search of a person housed in a holding, detention, or local correctional facility to search for and seize a weapon may be conducted at other than a private location if there arises a specific threat to institutional security that reasonably requires such a search or if all persons in the facility are being searched for the discovery of weapons or contraband. [1983 1st ex.s. c 42 § 5.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.110 Strip, body cavity searches—Actions for damages, injunctive relief. (1) A person who suffers damage or harm as a result of a violation of RCW 10.79.080, 10.79.090, 10.79.100, or 10.79.130 through 10.79.170 may bring a civil action to recover actual damages sustained by him or her. The court may, in its discretion, award injunctive and declaratory relief as it deems necessary.

(2) RCW 10.79.080, 10.79.090, 10.79.100, and 10.79.130 through 10.79.170 shall not be construed as limiting any constitutional, common law, or statutory right of any person regarding any action for damages or injunctive relief, or as precluding the prosecution under another provision of law of any law enforcement officer

or other person who has violated RCW 10.79.080, 10.79.090, 10.79.100, or 10.79.130 through 10.79.170. [1986 c 88 § 7; 1983 1st ex.s. c 42 § 6.]

Effective date—Severability—1983 1st ex.s. c 42: See notes following RCW 10.79.060.

10.79.120 Strip, body cavity searches—Application of RCW 10.79.130 through 10.79.160. RCW 10.79.130 through 10.79.160 apply to any person in custody at a holding, detention, or local correctional facility, other than a person committed to incarceration by order of a court, regardless of whether an arrest warrant or other court order was issued before the person was arrested or otherwise taken into custody unless the court issuing the warrant has determined that the person shall not be released on personal recognizance, bail, or bond. RCW 10.79.130 through 10.79.160 do not apply to a person held for post-conviction incarceration for a criminal offense. The definitions and remedies provided by RCW 10.79.070 and 10.79.110 apply to RCW 10.79.130 through 10.79.160. [1986 c 88 § 1.]

10.79.130 Strip, body cavity searches—Warrant required—Exceptions. (1) No person to whom this section is made applicable by RCW 10.79.120 may be strip searched without a warrant unless:

(a) There is a reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other thing concealed on the body of the person to be searched, that constitutes a threat to the security of a holding, detention, or local correctional facility;

(b) There is probable cause to believe that a strip search is necessary to discover other criminal evidence concealed on the body of the person to be searched, but not constituting a threat to facility security; or

(c) There is a reasonable suspicion to believe that a strip search is necessary to discover a health condition requiring immediate medical attention.

(2) For the purposes of subsection (1) of this section, a reasonable suspicion is deemed to be present when the person to be searched has been arrested for:

(a) A violent offense as defined in RCW 9.94A.030 or any successor statute;

(b) An offense involving escape, burglary, or the use of a deadly weapon; or

(c) An offense involving possession of a drug or controlled substance under chapter 69.41, 69.50, or 69.52 RCW or any successor statute. [1986 c 88 § 2.]

10.79.140 Strip, body cavity searches—Uncategorized searches—Determination of reasonable suspicion, probable cause—Less-intrusive alternatives.

(1) A person to whom this section is made applicable by RCW 10.79.120 who has not been arrested for an offense within one of the categories specified in RCW 10.79.130(2) may nevertheless be strip searched, but only upon an individualized determination of reasonable suspicion or probable cause as provided in this section.

(2) With the exception of those situations in which reasonable suspicion is deemed to be present under RCW 10.79.130(2), no strip search may be conducted without the specific prior written approval of the jail unit supervisor on duty. Before any strip search is conducted, reasonable efforts must be made to use other less-intrusive means, such as pat-down, electronic metal detector, or clothing searches, to determine whether a weapon, criminal evidence, contraband, or other thing is concealed on the body, or whether a health condition requiring immediate medical attention is present. The determination of whether reasonable suspicion or probable cause exists to conduct a strip search shall be made only after such less-intrusive means have been used and shall be based on a consideration of all information and circumstances known to the officer authorizing the strip search, including but not limited to the following factors:

(a) The nature of the offense for which the person to be searched was arrested;

(b) The prior criminal record of the person to be searched; and

(c) Physically violent behavior of the person to be searched, during or after the arrest. [1986 c 88 § 3.]

10.79.150 Strip, body cavity searches—Written record required, contents—Unnecessary persons prohibited. (1) A written record of any strip search shall be maintained in the individual file of each person strip searched.

(2) With respect to any strip search conducted under RCW 10.79.140, the record shall contain the following information:

(a) The name of the supervisor authorizing the strip search;

(b) The specific facts constituting reasonable suspicion to believe that the strip search was necessary;

(c) The name and serial number of the officer conducting the strip search and of all other persons present or observing during any part of the strip search;

(d) The time, date, and place of the strip search; and

(e) Any weapons, criminal evidence, contraband, or other thing, or health condition discovered as a result of the strip search.

(3) With respect to any strip search conducted under RCW 10.79.130(2), the record shall contain, in addition to the offense or offenses for which the person searched was arrested, the information required by subsection (2) (c), (d), and (e) of this section.

(4) The record may be included or incorporated in existing forms used by the facility, including the booking form required under the Washington Administrative Code. A notation of the name of the person strip searched shall also be entered in the log of daily activities or other chronological record, if any, maintained pursuant to the Washington Administrative Code.

(5) Except at the request of the person to be searched, no person may be present or observe during the strip search unless necessary to conduct the search. [1986 c 88 § 4.]

10.79.160 Strip, body cavity searches—Physical examinations for public health purposes excluded. Physical examinations conducted by licensed medical professionals solely for public health purposes under separate statutory authority shall not be considered searches for purposes of RCW 10.79.120, 10.79.130, and 10.79.140. [1986 c 88 § 5.]

10.79.170 Strip, body cavity searches—Nonliability when search delayed. No governmental entity and no employee or contracting agent of a governmental entity shall be liable for injury, death, or damage caused by a person in custody when the injury, death, or damage is caused by or made possible by contraband that would have been discovered sooner but for the delay caused by having to seek a search warrant under RCW 10.79.080 or 10.79.130 through 10.79.160. [1986 c 88 § 6.]

Chapter 10.82

COLLECTION AND DISPOSITION OF FINES AND COSTS

Sections

10.82.010	Execution for fines and costs.
10.82.020	Stay of execution for sixty days on recognizance.
10.82.025	Effect of recognizance—Execution of judgment after sixty days.
10.82.030	Commitment for failure to pay fine and costs—Execution against defendant's property—Reduction by payment, labor, or confinement.
10.82.040	Commitment for failure to pay fine and costs—Reduction of amount by performance of labor.
10.82.070	Disposition of costs, fines, fees, penalties, and forfeitures.
10.82.080	Unlawful receipt of public assistance—Deduction from subsequent assistance payments—Restitution payments.

City, county jail prisoners may be compelled to work: RCW 9.92.130, 9.92.140, 36.28.100.

Defendant liable for costs: RCW 10.64.015.

Fine and costs—Collection procedure, liability for, commitment for failure to pay, execution: RCW 10.01.160 through 10.01.180.

Jury fee disposition: RCW 10.46.190.

Payment of fine and costs in installments: RCW 9.92.070, 10.01.170.

10.82.010 Execution for fines and costs. Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions. [Code 1881 § 1120; 1873 p 242 § 278; 1854 p 123 § 142; RRS § 2201.]

Judgments a lien on realty: RCW 10.64.080.

10.82.020 Stay of execution for sixty days on recognizance. Every defendant against whom a judgment has been rendered for fine and costs, may stay the execution for the fine assessed and costs for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for such fine and costs. [Code 1881 § 1123; 1873 p 242 § 281; 1854 p 124 § 145; RRS § 2204. FORMER PART OF SECTION: Code 1881 § 1124; 1873 p 243 § 282; 1854 p

124 § 146; RRS § 2205, now codified as RCW 10.82.025.]

10.82.025 Effect of recognizance—Execution of judgment after sixty days. Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment, and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in *this act, in committal for default to pay or secure the fine and costs. [Code 1881 § 1124; 1873 p 243 § 282; 1854 p 124 § 146; RRS § 2205. Formerly RCW 10.82.020, part.]

*Reviser's note: The term "this act" apparently refers to "An act to regulate the practice and pleadings in prosecutions for crimes" first enacted by Laws of 1854, page 100.

10.82.030 Commitment for failure to pay fine and costs—Execution against defendant's property—Reduction by payment, labor, or confinement. If any person ordered into custody until the fine and costs adjudged against him be paid shall not, within five days, pay, or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him to imprison such defendant in the county jail until the amount of such fine and costs owing are paid. Execution may at any time issue against the property of the defendant for that portion of such fine and costs not reduced by the application of this section. The amount of such fine and costs owing shall be the whole of such fine and costs reduced by the amount of any portion thereof paid, and thirty-five dollars for every day the defendant performs labor as provided in RCW 10.82.040, and twenty-five dollars for every day the defendant does not perform such labor while imprisoned. [1983 c 276 § 2; 1967 c 200 § 4; 1891 c 28 § 84; 1883 p 38 § 1, part; Code 1881 § 1125; 1873 p 243 § 283; 1854 p 124 § 147; RRS § 2206. Formerly RCW 10.82.030 and 10.82.050.]

Severability—1967 c 200: See note following RCW 9.45.122.

Commitment until fines and costs are paid: RCW 10.70.010.

Fine and costs, liability of defendant, collection procedure, contempt, commitment, execution: RCW 10.01.160 through 10.01.180.

10.82.040 Commitment for failure to pay fine and costs—Reduction of amount by performance of labor. When a defendant is committed to jail, on failure to pay any fines and costs, he shall, under the supervision of the county sheriff and subject to the terms of any ordinances adopted by the county commissioners, be permitted to perform labor to reduce the amount owing of the fine and costs. [1967 c 200 § 5; 1883 p 38 § 1, part; Code 1881 § 1129; 1877 p 206 § 8; 1873 p 243 § 287; 1854 p 124 § 151; RRS § 2209, part.]

Severability—1967 c 200: See note following RCW 9.45.122.

10.82.070 Disposition of costs, fines, fees, penalties, and forfeitures. (1) All sums of money derived from

costs except those costs awarded to prevailing parties under RCW 4.84.010, 36.18.040, or other similar statute, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued.

(2) The county treasurer shall remit monthly thirty-two percent of the money received under this section to the state treasurer for deposit as provided under RCW 43.08.250 and shall deposit the remainder as provided by law.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed. [1987 c 202 § 169; 1985 c 389 § 7; 1984 c 258 § 313; 1969 ex.s. c 199 § 11; 1967 c 122 § 1; 1965 c 158 § 16; 1919 c 30 § 1; 1909 p 323 § 9; 1897 c 118 § 113; 1895 c 68 § 1; 1890 p 383 § 89; 1886 p 20 § 58; Code 1881 § 3211; 1873 p 421 § 3; RRS § 4940. Formerly codified as RCW 9.01.140.]

Intent—1987 c 202: See note following RCW 2.04.190.

Effective date—1985 c 389: See note following RCW 27.24.070.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

10.82.080 Unlawful receipt of public assistance—Deduction from subsequent assistance payments—Restitution payments. (1) When a superior court has, as a condition of the sentence for a person convicted of the unlawful receipt of public assistance, ordered restitution to the state of that overpayment or a portion thereof:

(a) The department of social and health services shall deduct the overpayment from subsequent assistance payments as provided in RCW 43.20B.630, when the person is receiving public assistance; or

(b) Ordered restitution payments may be made at the direction of the court to the clerk of the appropriate county or directly to the department of social and health services when the person is not receiving public assistance.

(2) However, if payments are received by the county clerk, each payment shall be transmitted to the department of social and health services within forty-five days after receipt by the county. [1987 c 75 § 2; 1985 c 245 § 2; 1982 c 201 § 1.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

Chapter 10.85 REWARDS

Sections	
10.85.030	Rewards by counties, cities, towns, port commissions authorized.
10.85.040	Conflicting claims.
10.85.050	Payment of rewards.
10.85.900	Severability—1979 ex.s. c 53.

Offer of rewards by governor: RCW 43.06.010(8).

10.85.030 Rewards by counties, cities, towns, port commissions authorized. The legislative authority of any county in the state, a port commission, or the governing body of a city or town, when in its opinion the public good requires it, is hereby authorized to offer and pay a suitable reward to any person or persons for information leading to:

(a) The arrest of a specified person or persons convicted of or charged with any criminal offense; or

(b) The arrest and conviction of a person or persons committing a specified criminal offense.

In the event of crimes against county, port district, city, or town property, including but not limited to road signs, vehicles, buildings, or any other type of county, port district, city, or town property, the legislative authority of any county, a port commission, or the governing body of a city or town may offer and pay a suitable reward to any person or persons who shall furnish information leading to the arrest and conviction of any person of any offense against this county, port district, city, or town property, including but not limited to those offenses set forth in RCW 9A.48.070 through 9A.48.090, whether or not the offense is a felony, gross misdemeanor, or misdemeanor. [1986 c 185 § 1; 1981 c 211 § 1; 1979 ex.s. c 53 § 1; 1975-'76 2nd ex.s. c 25 § 1; 1886 p 124 § 1; RRS § 2249.]

10.85.040 Conflicting claims. When more than one claimant applies for the payment of any reward, offered by any county legislative authority, board of commissioners of a port district, or city or town governing body, the county legislative authority, board of commissioners of a port district, or city or town governing body shall determine to whom the same shall be paid, and if to more than one person, in what proportion to each; and their determination shall be final and conclusive. [1986 c 185 § 2; 1979 ex.s. c 53 § 2; 1886 p 124 § 3; RRS § 2251.]

10.85.050 Payment of rewards. Whenever any reward has been offered by any county legislative authority, board of commissioners of a port district, or city or town governing body in the state under RCW 10.85.030, the person or persons providing the information shall be entitled to the reward, and the county legislative authority, board of commissioners of a port district, or city or town governing body which has offered the reward is authorized to draw a warrant or warrants out of any money in the county, port district, or city or town treasury, as appropriate, not otherwise appropriated. [1986 c

185 § 3; 1979 ex.s. c 53 § 3; 1886 p 124 § 2; RRS § 2250.]

10.85.900 Severability—1979 ex.s. c 53. 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. [1979 ex.s. c 53 § 6.]

Chapter 10.88

UNIFORM CRIMINAL EXTRADITION ACT

Sections

10.88.200	Definitions.
10.88.210	Authority of governor.
10.88.220	Demand for extradition—Requirements.
10.88.230	Investigation of demand—Report.
10.88.240	Return or surrender of person charged in another state.
10.88.250	Surrender of person charged with crime committed in state other than demanding state.
10.88.260	Warrant of arrest.
10.88.270	Authority of officer or other person under warrant.
10.88.280	Authority to command assistance.
10.88.290	Rights of person arrested.
10.88.300	Delivery of person in violation of RCW 10.88.290—Penalty.
10.88.310	Confinement of prisoner.
10.88.320	Charge or complaint—Warrant of arrest.
10.88.330	Arrest without warrant.
10.88.340	Preliminary examination—Commitment.
10.88.350	Bail.
10.88.360	Failure to make timely arrest or demand for extradition.
10.88.370	Failure to appear—Bond forfeiture—Arrest—Recovery on bond.
10.88.380	Pending criminal prosecution in this state.
10.88.390	Recall or reissuance of warrant.
10.88.400	Demand by governor of this state for extradition—Warrant—Agent.
10.88.410	Application for requisition for return of person—Contents—Affidavits—Copies.
10.88.420	Civil process—Service on extradited person.
10.88.430	Waiver of extradition.
10.88.440	Rights, powers, privileges or jurisdiction of state not waived.
10.88.450	Trial for other crimes.
10.88.460	Extradition or surrender of obligor—Uniform reciprocal enforcement of support act.
10.88.900	Construction—1971 ex.s. c 46.
10.88.910	Short title.
10.88.920	Effective date—1971 ex.s. c 46.
10.88.930	Severability—1971 ex.s. c 46.

Fugitives of this state: Chapter 10.34 RCW.

Interstate compact on juveniles: Chapter 13.24 RCW.

Return of parole violators from outside the state: RCW 9.95.280 through 9.95.300.

10.88.200 Definitions. Where appearing in this chapter, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state, and the term "state" referring to a state other than this state refers to any other state, or the District of Columbia, or territory organized or unorganized of the United States of America. [1971 ex.s. c 46 § 1.]

Reviser's note: Throughout this chapter, the phrase "this act" has been changed to "this chapter." This act [1971 ex.s. c 46] consists of this chapter, the 1971 amendment of RCW 26.21.050, and the repeal of RCW 10.88.010 through 10.88.060.

10.88.210 Authority of governor. Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, the governor of this state may in his discretion have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. [1971 ex.s. c 46 § 2.]

10.88.220 Demand for extradition—Requirements. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under RCW 10.88.250, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be certified or authenticated by the executive authority making the demand. [1971 ex.s. c 46 § 3.]

10.88.230 Investigation of demand—Report. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered. [1971 ex.s. c 46 § 4.]

10.88.240 Return or surrender of person charged in another state. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in RCW 10.88.410 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. [1971 ex.s. c 46 § 5.]

10.88.250 Surrender of person charged with crime committed in state other than demanding state. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in RCW 10.88.220 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. [1971 ex.s. c 46 § 6.]

10.88.260 Warrant of arrest. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. [1971 ex.s. c 46 § 7.]

10.88.270 Authority of officer or other person under warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter to the duly authorized agent of the demanding state. [1971 ex.s. c 46 § 8.]

10.88.280 Authority to command assistance. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance. [1971 ex.s. c 46 § 9.]

10.88.290 Rights of person arrested. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of

habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state: *Provided*, That the hearing provided for in this section shall not be available except as may be constitutionally required if a hearing on the legality of arrest has been held pursuant to RCW 10.88.320 or 10.88.330. [1971 ex.s. c 46 § 10.]

10.88.300 Delivery of person in violation of RCW 10.88.290—Penalty. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in wilful disobedience to RCW 10.88.290, shall be guilty of a gross misdemeanor and, on conviction, shall be imprisoned in the county jail for not more than one year, or be fined not more than one thousand dollars, or both. [1971 ex.s. c 46 § 11.]

10.88.310 Confinement of prisoner. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: *Provided, however*, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. [1971 ex.s. c 46 § 12.]

10.88.320 Charge or complaint—Warrant of arrest. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under RCW 10.88.250, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the

terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under RCW 10.88-.250, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. [1971 ex.s. c 46 § 13.]

10.88.330 Arrest without warrant. (1) The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in RCW 10.88.320; and thereafter his answer shall be heard as if he had been arrested on a warrant.

(2) An officer of the United States customs service or the immigration and naturalization service may, without a warrant, arrest a person if:

- (a) The officer is on duty;
- (b) One or more of the following situations exists:
 - (i) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 9A.36 RCW, against the officer or against any other person in the presence of the officer;
 - (ii) The person commits an assault or related crime while armed, defined and punishable under chapter 9.41 RCW, against the officer or against any other person in the presence of the officer;
 - (iii) The officer has reasonable cause to believe that a crime as defined in (b) (i) or (ii) of this subsection has been committed and reasonable cause to believe that the person to be arrested has committed it;
 - (iv) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it; or
 - (v) The officer has received positive information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a peace officer holds a warrant for the person's arrest; and

(c) The regional commissioner of customs certifies to the state of Washington that the customs officer has received proper training within the agency to enable that

officer to enforce or administer this subsection. [1979 ex.s. c 244 § 16; 1971 ex.s. c 46 § 14.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

10.88.340 Preliminary examination—Commitment. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under RCW 10.88.250, that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in RCW 10.88.350, or until he shall be legally discharged. [1971 ex.s. c 46 § 15.]

10.88.350 Bail. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such a bond, and for his surrender, to be arrested upon the warrant of the governor of this state. [1971 ex.s. c 46 § 16.]

10.88.360 Failure to make timely arrest or demand for extradition. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in RCW 10.88.350, but within a period not to exceed sixty days after the date of such new bond: *Provided*, That the governor may, except in cases in which the offense is punishable under laws of the demanding state by death or life imprisonment, deny a demand for extradition when such demand is not received by the governor before the expiration of one hundred twenty days from the date of arrest in this state of the alleged fugitive, in the absence of a showing of good cause for such delay. [1971 ex.s. c 46 § 17.]

10.88.370 Failure to appear—Bond forfeiture—Arrest—Recovery on bond. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state. [1971 ex.s. c 46 § 18.]

10.88.380 Pending criminal prosecution in this state. If a criminal prosecution has been instituted against

such person under the laws of this state and is still pending the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state. [1971 ex.s. c 46 § 19.]

10.88.390 Recall or reissuance of warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper. [1971 ex.s. c 46 § 20.]

10.88.400 Demand by governor of this state for extradition—Warrant—Agent. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the appropriate authority of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed. [1971 ex.s. c 46 § 21.]

10.88.410 Application for requisition for return of person—Contents—Affidavits—Copies. (1) When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to

the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition. [1971 ex.s. c 46 § 22.]

10.88.420 Civil process—Service on extradited person. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been finally convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited. [1971 ex.s. c 46 § 23.]

10.88.430 Waiver of extradition. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in RCW 10.88.260 and 10.88.270 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state: *Provided, however,* That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in RCW 10.88.290.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: *Provided, however,* That nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state. [1971 ex.s. c 46 § 24.]

10.88.440 Rights, powers, privileges or jurisdiction of state not waived. Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person

for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. [1971 ex.s. c 46 § 25.]

10.88.450 Trial for other crimes. After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition. [1971 ex.s. c 46 § 26.]

10.88.460 Extradition or surrender of obligor—Uniform reciprocal enforcement of support act. See Chapter 26.21 RCW.

10.88.900 Construction—1971 ex.s. c 46. The provisions of this chapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it, to the extent which it has been enacted by this state. [1971 ex.s. c 46 § 27.]

10.88.910 Short title. RCW 10.88.200 through 10.88.450 shall be known and may be cited as the Uniform Criminal Extradition Act. [1971 ex.s. c 46 § 28.]

10.88.920 Effective date—1971 ex.s. c 46. This act shall become effective on July 1, 1971. [1971 ex.s. c 46 § 29.]

10.88.930 Severability—1971 ex.s. c 46. If any provisions of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1971 ex.s. c 46 § 32.]

Chapter 10.89

UNIFORM ACT ON FRESH PURSUIT

Sections

10.89.010	Authority of foreign peace officer.
10.89.020	Preliminary examination by magistrate.
10.89.030	Construction as to lawfulness of arrest.
10.89.040	"State" includes District of Columbia.
10.89.050	"Fresh pursuit" defined.
10.89.060	Duty to send copies to other states.
10.89.070	Severability—1943 c 261.
10.89.080	Short title.

10.89.010 Authority of foreign peace officer. Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest

him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state. [1943 c 261 § 1; Rem. Supp. 1943 § 2252-1. Formerly RCW 10.88.070.]

10.89.020 Preliminary examination by magistrate. If an arrest is made in this state by an officer of another state in accordance with the provisions of RCW 10.89-.010, he shall, without unnecessary delay, take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state. If the magistrate determines that the arrest was unlawful, he shall discharge the person arrested. [1943 c 261 § 2; Rem. Supp. 1943 § 2252-2. Formerly RCW 10.88.080.]

10.89.030 Construction as to lawfulness of arrest. RCW 10.89.010 shall not be construed so as to make unlawful any arrest in this state which otherwise would be lawful. [1943 c 261 § 3; Rem. Supp. 1943 § 2252-3. Formerly RCW 10.88.100.]

10.89.040 "State" includes District of Columbia. For the purpose of this chapter the word "state" shall include the District of Columbia. [1943 c 261 § 4; Rem. Supp. 1943 § 2252-4. Formerly RCW 10.88.110.]

10.89.050 "Fresh pursuit" defined. The term "fresh pursuit" as used in this chapter, shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony actually has been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay. [1943 c 261 § 5; Rem. Supp. 1943 § 2252-5. Formerly RCW 10.88.090.]

10.89.060 Duty to send copies to other states. Upon the passage and approval by the governor of this chapter, it shall be the duty of the secretary of state, or other officer, to certify a copy of this chapter to the executive department of each of the states of the United States. [1943 c 261 § 6; Rem. Supp. 1943 § 2252-6.]

10.89.070 Severability—1943 c 261. If any part of this chapter is for any reason declared void, it is declared to be the intent of this chapter that such invalidity shall not affect the validity of the remaining portions of this chapter. [1943 c 261 § 7 Rem. Supp. 1943 § 2252-7.]

10.89.080 Short title. This chapter may be cited as the "Uniform Act on Fresh Pursuit." [1943 c 261 § 8; Rem. Supp. 1943 § 2252-8.]

Chapter 10.91

UNIFORM RENDITION OF ACCUSED PERSONS ACT

Sections

10.91.010	Arrest and return of released person charged in another state—Violation of release conditions—Request—Documents—Warrant—Investigation.
10.91.020	Preliminary hearing—Waiver—Conditions of release.
10.91.030	Preliminary hearing—Investigation report—Findings—Order authorizing return.
10.91.040	"Judicial officer of this state," "judicial officer" defined.
10.91.050	Costs.
10.91.900	Severability—1971 ex.s. c 17.
10.91.910	Construction—1971 ex.s. c 17.
10.91.920	Short title.

10.91.010 Arrest and return of released person charged in another state—Violation of release conditions—Request—Documents—Warrant—Investigation. (1) If a person who has been charged with crime in another state and released from custody prior to final judgment, including the final disposition of any appeal, is alleged to have violated the terms and conditions of his release, and is present in this state, a designated agent of the court, judge, or magistrate which authorized the release may request the issuance of a warrant for the arrest of the person and an order authorizing his return to the demanding court, judge, or magistrate. Before the warrant is issued, the designated agent must file with a judicial officer of this state the following documents:

(a) an affidavit stating the name and whereabouts of the person whose removal is sought, the crime with which the person was charged, the time and place of the crime charged, and the status of the proceedings against him;

(b) a certified copy of the order or other document specifying the terms and conditions under which the person was released from custody; and

(c) a certified copy of an order of the demanding court, judge, or magistrate stating the manner in which the terms and the conditions of the release have been violated and designating the affiant its agent for seeking removal of the person.

(2) Upon initially determining that the affiant is a designated agent of the demanding court, judge, or magistrate, and that there is a probable cause for believing that the person whose removal is sought has violated the terms or conditions of his release, the judicial officer shall issue a warrant to a law enforcement officer of this state for the person's arrest.

(3) The judicial officer shall notify the prosecuting attorney of his action and shall direct him to investigate the case to ascertain the validity of the affidavits and documents required by subsection (1) and the identity and authority of the affiant. [1971 ex.s. c 17 § 2.]

10.91.020 Preliminary hearing—Waiver—Conditions of release. (1) The person whose removal is sought shall be brought before the judicial officer without unnecessary delay upon arrest pursuant to the warrant; whereupon the judicial officer shall set a time and place for hearing, and shall advise the person of his right to have the assistance of counsel, to confront the witnesses against him, and to produce evidence in his own behalf at the hearing.

(2) The person whose removal is sought may at this time in writing waive the hearing and agree to be returned to the demanding court, judge, or magistrate. If a waiver is executed, the judicial officer shall issue an order pursuant to RCW 10.91.030.

(3) The judicial officer may impose conditions of release authorized by the laws of this state which will reasonably assure the appearance at the hearing of the person whose removal is sought. [1971 ex.s. c 17 § 3.]

10.91.030 Preliminary hearing—Investigation report—Findings—Order authorizing return. The prosecuting attorney shall appear at the hearing and report to the judicial officer the results of his investigation. If the judicial officer finds that the affiant is a designated agent of the demanding court, judge, or magistrate and that the person whose removal is sought was released from custody by the demanding court, judge, or magistrate, and that the person has violated the terms or conditions of his release, the judicial officer shall issue an order authorizing the return of the person to the custody of the demanding court, judge, or magistrate forthwith. [1971 ex.s. c 17 § 4.]

10.91.040 "Judicial officer of this state," "judicial officer" defined. For the purpose of this chapter "judicial officer of this state" and "judicial officer" mean a judge of the superior or district court. [1987 c 202 § 170; 1971 ex.s. c 17 § 5.]

Intent—1987 c 202: See note following RCW 2.04.190.

10.91.050 Costs. The costs of the procedures required by this chapter shall be borne by the demanding state, except when the designated agent is not a public official. In any case when the designated agent is not a public official, he shall bear the cost of such procedures. [1971 ex.s. c 17 § 9.]

10.91.900 Severability—1971 ex.s. c 17. 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 which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 17 § 6.]

10.91.910 Construction—1971 ex.s. c 17. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1971 ex.s. c 17 § 7.]

10.91.920 Short title. This chapter may be cited as the "Uniform Rendition of Accused Persons Act." [1971 ex.s. c 17 § 8.]

Chapter 10.93

WASHINGTON MUTUAL AID PEACE OFFICERS POWERS ACT

Sections

10.93.001	Short title—Legislative intent—Construction.
10.93.020	Definitions.
10.93.030	Reporting use of authority under this chapter.
10.93.040	Liability for exercise of authority.
10.93.050	Supervisory control over peace officers.
10.93.060	Privileges and immunities applicable.
10.93.070	General authority peace officer—Powers of, circumstances.
10.93.080	Limited authority peace officer—No additional powers.
10.93.090	Specially commissioned peace officer—Powers of, circumstances.
10.93.100	Federal peace officers—No additional powers.
10.93.110	Attorney general—No additional powers.
10.93.120	Fresh pursuit, arrest.
10.93.130	Contracting authority of law enforcement agencies.
10.93.140	State patrol exempted.
10.93.900	Effective date—1985 c 89.

10.93.001 Short title—Legislative intent—Construction. (1) This chapter may be known and cited as the Washington mutual aid peace officer powers act of 1985.

(2) It is the intent of the legislature that current artificial barriers to mutual aid and cooperative enforcement of the laws among general authority local, state, and federal agencies be modified pursuant to this chapter.

(3) This chapter shall be liberally construed to effectuate the intent of the legislature to modify current restrictions upon the limited territorial and enforcement authority of general authority peace officers and to effectuate mutual aid among agencies.

(4) The modification of territorial and enforcement authority of the various categories of peace officers covered by this chapter shall not create a duty to act in extraterritorial situations beyond any duty which may otherwise be imposed by law or which may be imposed by the primary commissioning agency. [1985 c 89 § 1.]

10.93.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "General authority Washington law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement

agency. The Washington state patrol is a general authority Washington law enforcement agency.

(2) "Limited authority Washington law enforcement agency" means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources, fisheries, *game, and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

(3) "General authority Washington peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(4) "Limited authority Washington peace officer" means any full-time, fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible. A limited authority Washington peace officer may be a specially commissioned Washington peace officer if otherwise qualified for such status under this chapter.

(5) "Specially commissioned Washington peace officer", for the purposes of this chapter, means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under this chapter as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon or Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho. A reserve peace officer is an individual who is an officer of a Washington law enforcement agency who does not serve such agency on a full-time basis but who, when called by the agency into active service, is fully commissioned on the same basis as full-time peace officers to enforce the criminal laws of the state.

(6) "Federal peace officer" means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(7) "Agency with primary territorial jurisdiction" means a city or town police agency which has responsibility for police activity within its boundaries; or a county police or sheriff's department which has responsibility with regard to police activity in the unincorporated areas within the county boundaries; or a statutorily

authorized port district police agency or four-year state college or university police agency which has responsibility for police activity within the statutorily authorized enforcement boundaries of the port district, state college, or university.

(8) "Primary commissioning agency" means (a) the employing agency in the case of a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer, and (b) the commissioning agency in the case of a specially commissioned Washington peace officer (i) who is performing functions within the course and scope of the special commission and (ii) who is not also a general authority Washington peace officer, a limited authority Washington peace officer, an Indian tribal peace officer, or a federal peace officer.

(9) "Primary function of an agency" means that function to which greater than fifty percent of the agency's resources are allocated.

(10) "Mutual law enforcement assistance" includes, but is not limited to, one or more law enforcement agencies aiding or assisting one or more other such agencies through loans or exchanges of personnel or of material resources, for law enforcement purposes. [1985 c 89 § 2.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

10.93.030 Reporting use of authority under this chapter. The circumstances surrounding any actual exercise of peace officer authority under this chapter shall be timely reported, after the fact, to the Washington law enforcement agency with primary territorial jurisdiction and shall be subject to any reasonable reporting procedure which may be established by such agency. [1985 c 89 § 3.]

10.93.040 Liability for exercise of authority. Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by an officer acting within the course and scope of the officer's duties as a peace officer under this chapter is the responsibility of the primary commissioning agency unless the officer acts under the direction and control of another agency or unless the liability is otherwise allocated under a written agreement between the primary commissioning agency and another agency. [1985 c 89 § 4.]

10.93.050 Supervisory control over peace officers. All persons exercising peace officer powers under this chapter are subject to supervisory control of and limitations imposed by the primary commissioning agency, but the primary commissioning agency may, by agreement with another agency, temporarily delegate supervision over the peace officer to another agency. [1985 c 89 § 5.]

10.93.060 Privileges and immunities applicable. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, all pension, relief,

disability, worker's compensation insurance, and other benefits which apply to the activity of officers, agents, or employees of any law enforcement agency when performing their respective functions within the territorial limits of their respective agencies shall apply to them and to their primary commissioning agencies to the same degree and extent while such persons are engaged in the performance of authorized functions and duties under this chapter. [1985 c 89 § 6.]

10.93.070 General authority peace officer—Powers of, circumstances. In addition to any other powers vested by law, a general authority Washington peace officer who possesses a certificate of basic law enforcement training or a certificate of equivalency or has been exempted from the requirement therefor by the Washington state criminal justice training commission may enforce the traffic or criminal laws of this state throughout the territorial bounds of this state, under the following enumerated circumstances:

(1) Upon the prior written consent of the sheriff or chief of police in whose primary territorial jurisdiction the exercise of the powers occurs;

(2) In response to an emergency involving an immediate threat to human life or property;

(3) In response to a request for assistance pursuant to a mutual law enforcement assistance agreement with the agency of primary territorial jurisdiction or in response to the request of a peace officer with enforcement authority;

(4) When the officer is transporting a prisoner;

(5) When the officer is executing an arrest warrant or search warrant; or

(6) When the officer is in fresh pursuit, as defined in RCW 10.93.120. [1985 c 89 § 7.]

10.93.080 Limited authority peace officer—No additional powers. A limited authority Washington peace officer shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 8.]

10.93.090 Specially commissioned peace officer—Powers of, circumstances. A specially commissioned Washington peace officer who has successfully completed a course of basic training prescribed or approved for such officers by the Washington state criminal justice training commission may exercise any authority which the special commission vests in the officer, throughout the territorial bounds of the state, outside of the officer's primary territorial jurisdiction under the following circumstances:

(1) The officer is in fresh pursuit, as defined in RCW 10.93.120; or

(2) The officer is acting pursuant to mutual law enforcement assistance agreement between the primary commissioning agency and the agency with primary territorial jurisdiction. [1985 c 89 § 9.]

10.93.100 Federal peace officers—No additional powers. Federal peace officers shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 10.]

10.93.110 Attorney general—No additional powers. The attorney general shall have no additional powers by virtue of this chapter but shall be limited to those powers already vested by law or hereafter created by separate enactment. [1985 c 89 § 11.]

10.93.120 Fresh pursuit, arrest. (1) Any peace officer who has authority under Washington law to make an arrest may proceed in fresh pursuit of a person (a) who is reasonably believed to have committed a violation of traffic or criminal laws, or (b) for whom such officer holds a warrant of arrest, and such peace officer shall have the authority to arrest and to hold such person in custody anywhere in the state.

(2) The term "fresh pursuit," as used in this chapter, includes, without limitation, fresh pursuit as defined by the common law. Fresh pursuit does not necessarily imply immediate pursuit, but pursuit without unreasonable delay. [1985 c 89 § 12.]

10.93.130 Contracting authority of law enforcement agencies. Under the interlocal cooperation act, chapter 39.34 RCW, any law enforcement agency referred to by this chapter may contract with any other such agency and may also contract with any law enforcement agency of another state, or such state's political subdivision, to provide mutual law enforcement assistance. The agency with primary territorial jurisdiction may require that officers from participating agencies meet reasonable training or certification standards or other reasonable standards. [1985 c 89 § 13.]

10.93.140 State patrol exempted. This chapter does not limit the scope of jurisdiction and authority of the Washington state patrol as otherwise provided by law, and the Washington state patrol shall not be bound by the reporting requirements of RCW 10.93.030. [1985 c 89 § 14.]

10.93.900 Effective date—1985 c 89. This act shall take effect July 1, 1985. [1985 c 89 § 17.]

Chapter 10.95

CAPITAL PUNISHMENT—AGGRAVATED FIRST DEGREE MURDER

Sections

10.95.010	Supreme court rules promulgated under RCW 2.04.190 and 2.04.200 not to supersede or alter chapter provisions.
10.95.020	Aggravated first degree murder defined.
10.95.030	Sentences for aggravated first degree murder.
10.95.040	Special sentencing proceeding—Notice—Filing—Service.

10.95.050	Special sentencing proceeding—When held—Jury to decide matters presented—Waiver—Reconvening same jury—Impanelling new jury—Peremptory challenges.
10.95.060	Special sentencing proceeding—Jury instructions—Opening statements—Evidence—Arguments—Question for jury.
10.95.070	Special sentencing proceeding—Factors which jury may consider in deciding whether leniency merited.
10.95.080	When sentence to death or sentence to life imprisonment shall be imposed.
10.95.090	Sentence if death sentence commuted, held invalid, or if death sentence established by chapter held invalid.
10.95.100	Mandatory review of death sentence by supreme court—Notice—Transmittal—Contents of notice—Jurisdiction.
10.95.110	Verbatim report of trial proceedings—Preparation—Transmittal to supreme court—Clerk's papers—Receipt.
10.95.120	Information report—Form—Contents—Submission to supreme court, defendant, prosecuting attorney.
10.95.130	Questions posed for determination by supreme court in death sentence review—Review in addition to appeal—Consolidation of review and appeal.
10.95.140	Invalidation of sentence, remand for resentencing—Affirmation of sentence, remand for execution.
10.95.150	Time limit for deciding appeal or review of death sentence and filing opinion.
10.95.160	Death warrant—Issuance—Form—Time for execution of judgment and sentence.
10.95.170	Imprisonment of defendant.
10.95.180	Death penalty—How executed.
10.95.190	Death warrant—Record—Return to trial court.
10.95.200	Proceedings for failure to execute on day named.
10.95.900	Severability—1981 c 138.

Homicide: Chapter 9A.32 RCW.

10.95.010 Supreme court rules promulgated under RCW 2.04.190 and 2.04.200 not to supersede or alter chapter provisions. No rule promulgated by the supreme court of Washington pursuant to RCW 2.04.190 and 2.04.200, now or in the future, shall be construed to supersede or alter any of the provisions of this chapter. [1981 c 138 § 1.]

10.95.020 Aggravated first degree murder defined. A person is guilty of aggravated first degree murder if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the board of prison terms and paroles; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(7) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime;

(8) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(9) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

(10) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim. [1981 c 138 § 2.]

10.95.030 Sentences for aggravated first degree murder. (1) Except as provided in subsection (2) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the board of prison terms and paroles or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. [1981 c 138 § 3.]

10.95.040 Special sentencing proceeding—Notice—Filing—Service. (1) If a person is charged with aggravated first degree murder as defined by RCW 10.95.020, the prosecuting attorney shall file written notice of a special sentencing proceeding to determine whether or not the death penalty should be imposed

when there is reason to believe that there are not sufficient mitigating circumstances to merit leniency.

(2) The notice of special sentencing proceeding shall be filed and served on the defendant or the defendant's attorney within thirty days after the defendant's arraignment upon the charge of aggravated first degree murder unless the court, for good cause shown, extends or reopens the period for filing and service of the notice. Except with the consent of the prosecuting attorney, during the period in which the prosecuting attorney may file the notice of special sentencing proceeding, the defendant may not tender a plea of guilty to the charge of aggravated first degree murder nor may the court accept a plea of guilty to the charge of aggravated first degree murder or any lesser included offense.

(3) If a notice of special sentencing proceeding is not filed and served as provided in this section, the prosecuting attorney may not request the death penalty. [1981 c 138 § 4.]

10.95.050 Special sentencing proceeding—When held—Jury to decide matters presented—Waiver—Reconvening same jury—Impanelling new jury—Peremptory challenges. (1) If a defendant is adjudicated guilty of aggravated first degree murder, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, a special sentencing proceeding shall be held if a notice of special sentencing proceeding was filed and served as provided by RCW 10.95.040. No sort of plea, admission, or agreement may abrogate the requirement that a special sentencing proceeding be held.

(2) A jury shall decide the matters presented in the special sentencing proceeding unless a jury is waived in the discretion of the court and with the consent of the defendant and the prosecuting attorney.

(3) If the defendant's guilt was determined by a jury verdict, the trial court shall reconvene the same jury to hear the special sentencing proceeding. The proceeding shall commence as soon as practicable after completion of the trial at which the defendant's guilt was determined. If, however, unforeseen circumstances make it impracticable to reconvene the same jury to hear the special sentencing proceeding, the trial court may dismiss that jury and convene a jury pursuant to subsection (4) of this section.

(4) If the defendant's guilt was determined by plea of guilty or by decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including but not limited to a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve persons plus whatever alternate jurors the trial court deems necessary. The defense and prosecution shall each be allowed to peremptorily challenge twelve jurors. If there is more than one defendant, each defendant shall be allowed an additional peremptory challenge and the prosecution shall be allowed a like number of additional challenges. If alternate jurors are selected, the defense and prosecution shall each be allowed one peremptory challenge for

each alternate juror to be selected and if there is more than one defendant each defendant shall be allowed an additional peremptory challenge for each alternate juror to be selected and the prosecution shall be allowed a like number of additional challenges. [1981 c 138 § 5.]

10.95.060 Special sentencing proceeding—Jury instructions—Opening statements—Evidence—Arguments—Question for jury. (1) At the commencement of the special sentencing proceeding, the trial court shall instruct the jury as to the nature and purpose of the proceeding and as to the consequences of its decision, as provided in RCW 10.95.030.

(2) At the special sentencing proceeding both the prosecution and defense shall be allowed to make an opening statement. The prosecution shall first present evidence and then the defense may present evidence. Rebuttal evidence may be presented by each side. Upon conclusion of the evidence, the court shall instruct the jury and then the prosecution and defense shall be permitted to present argument. The prosecution shall open and conclude the argument.

(3) The court shall admit any relevant evidence which it deems to have probative value regardless of its admissibility under the rules of evidence, including hearsay evidence and evidence of the defendant's previous criminal activity regardless of whether the defendant has been charged or convicted as a result of such activity. The defendant shall be accorded a fair opportunity to rebut or offer any hearsay evidence.

In addition to evidence of whether or not there are sufficient mitigating circumstances to merit leniency, if the jury sitting in the special sentencing proceeding has not heard evidence of the aggravated first degree murder of which the defendant stands convicted, both the defense and prosecution may introduce evidence concerning the facts and circumstances of the murder.

(4) Upon conclusion of the evidence and argument at the special sentencing proceeding, the jury shall retire to deliberate upon the following question: "Having in mind the crime of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?"

In order to return an affirmative answer to the question posed by this subsection, the jury must so find unanimously. [1981 c 138 § 6.]

10.95.070 Special sentencing proceeding—Factors which jury may consider in deciding whether leniency merited. In deciding the question posed by RCW 10.95.060(4), the jury, or the court if a jury is waived, may consider any relevant factors, including but not limited to the following:

(1) Whether the defendant has or does not have a significant history, either as a juvenile or an adult, of prior criminal activity;

(2) Whether the murder was committed while the defendant was under the influence of extreme mental disturbance;

(3) Whether the victim consented to the act of murder;

(4) Whether the defendant was an accomplice to a murder committed by another person where the defendant's participation in the murder was relatively minor;

(5) Whether the defendant acted under duress or domination of another person;

(6) Whether, at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental disease or defect;

(7) Whether the age of the defendant at the time of the crime calls for leniency; and

(8) Whether there is a likelihood that the defendant will pose a danger to others in the future. [1981 c 138 § 7.]

10.95.080 When sentence to death or sentence to life imprisonment shall be imposed. (1) If a jury answers affirmatively the question posed by RCW 10.95.060(4), or when a jury is waived as allowed by RCW 10.95.050(2) and the trial court answers affirmatively the question posed by RCW 10.95.060(4), the defendant shall be sentenced to death. The trial court may not suspend or defer the execution or imposition of the sentence.

(2) If the jury does not return an affirmative answer to the question posed in RCW 10.95.060(4), the defendant shall be sentenced to life imprisonment as provided in RCW 10.95.030(1). [1981 c 138 § 8.]

10.95.090 Sentence if death sentence commuted, held invalid, or if death sentence established by chapter held invalid. If any sentence of death imposed pursuant to this chapter is commuted by the governor, or held to be invalid by a final judgment of a court after all avenues of appeal have been exhausted by the parties to the action, or if the death penalty established by this chapter is held to be invalid by a final judgment of a court which is binding on all courts in the state, the sentence for aggravated first degree murder if there was an affirmative response to the question posed by RCW 10.95.060(4) shall be life imprisonment as provided in RCW 10.95.030(1). [1981 c 138 § 9.]

10.95.100 Mandatory review of death sentence by supreme court—Notice—Transmittal—Contents of notice—Jurisdiction. Whenever a defendant is sentenced to death, upon entry of the judgment and sentence in the trial court the sentence shall be reviewed on the record by the supreme court of Washington.

Within ten days of the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall transmit notice thereof to the clerk of the supreme court of Washington and to the parties. The notice shall include the caption of the case, its cause number, the defendant's name, the crime or crimes of which the defendant was convicted, the sentence imposed, the date of entry of judgment and sentence, and the names and addresses of the attorneys for the parties. The notice shall vest with the supreme court of

Washington the jurisdiction to review the sentence of death as provided by this chapter. The failure of the clerk of the trial court to transmit the notice as required shall not prevent the supreme court of Washington from conducting the sentence review as provided by *this act. [1981 c 138 § 10.]

***Reviser's note:** This act [1981 c 138] consists of chapter 10.95 RCW, an amendment to RCW 9A.32.040, and the repeal of RCW 9A.32.045 through 9A.32.047, 10.49.010, 10.70.040 through 10.70.130, and 10.94.010 through 10.94.900.

10.95.110 Verbatim report of trial proceedings—Preparation—Transmittal to supreme court—Clerk's papers—Receipt. (1) Within ten days after the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall cause the preparation of a verbatim report of the trial proceedings to be commenced.

(2) Within five days of the filing and approval of the verbatim report of proceedings, the clerk of the trial court shall transmit such verbatim report of proceedings together with copies of all of the clerk's papers to the clerk of the supreme court of Washington. The clerk of the supreme court of Washington shall forthwith acknowledge receipt of these documents by providing notice of receipt to the clerk of the trial court, the defendant or his or her attorney, and the prosecuting attorney. [1981 c 138 § 11.]

10.95.120 Information report—Form—Contents—Submission to supreme court, defendant, prosecuting attorney. In all cases in which a person is convicted of aggravated first degree murder, the trial court shall, within thirty days after the entry of the judgment and sentence, submit a report to the clerk of the supreme court of Washington, to the defendant or his or her attorney, and to the prosecuting attorney which provides the information specified under subsections (1) through (8) of this section. The report shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Washington and shall include the following:

(1) Information about the defendant, including the following:

- (a) Name, date of birth, gender, marital status, and race and/or ethnic origin;
- (b) Number and ages of children;
- (c) Whether his or her parents are living, and date of death where applicable;
- (d) Number of children born to his or her parents;
- (e) The defendant's educational background, intelligence level, and intelligence quotient;
- (f) Whether a psychiatric evaluation was performed, and if so, whether it indicated that the defendant was:
 - (i) Able to distinguish right from wrong;
 - (ii) Able to perceive the nature and quality of his or her act; and
 - (iii) Able to cooperate intelligently with his or her defense;
- (g) Any character or behavior disorders found or other pertinent psychiatric or psychological information;

- (h) The work record of the defendant;
- (i) A list of the defendant's prior convictions including the offense, date, and sentence imposed; and
- (j) The length of time the defendant has resided in Washington and the county in which he or she was convicted.

(2) Information about the trial, including:

- (a) The defendant's plea;
- (b) Whether defendant was represented by counsel;
- (c) Whether there was evidence introduced or instructions given as to defenses to aggravated first degree murder, including excusable homicide, justifiable homicide, insanity, duress, entrapment, alibi, intoxication, or other specific defense;

(d) Any other offenses charged against the defendant and tried at the same trial and whether they resulted in conviction;

(e) What aggravating circumstances were alleged against the defendant and which of these circumstances was found to have been applicable; and

(f) Names and charges filed against other defendant(s) if tried jointly and disposition of the charges.

(3) Information concerning the special sentencing proceeding, including:

(a) The date the defendant was convicted and date the special sentencing proceeding commenced;

(b) Whether the jury for the special sentencing proceeding was the same jury that returned the guilty verdict, providing an explanation if it was not;

(c) Whether there was evidence of mitigating circumstances;

(d) Whether there was, in the court's opinion, credible evidence of the mitigating circumstances as provided in RCW 10.95.070;

(e) The jury's answer to the question posed in RCW 10.95.060(4);

(f) The sentence imposed.

(4) Information about the victim, including:

(a) Whether he or she was related to the defendant by blood or marriage;

(b) The victim's occupation and whether he or she was an employer or employee of the defendant;

(c) Whether the victim was acquainted with the defendant, and if so, how well;

(d) The length of time the victim resided in Washington and the county;

(e) Whether the victim was the same race and/or ethnic origin as the defendant;

(f) Whether the victim was the same sex as the defendant;

(g) Whether the victim was held hostage during the crime and if so, how long;

(h) The nature and extent of any physical harm or torture inflicted upon the victim prior to death;

(i) The victim's age; and

(j) The type of weapon used in the crime, if any.

(5) Information about the representation of the defendant, including:

(a) Date counsel secured;

(b) Whether counsel was retained or appointed, including the reason for appointment;

(c) The length of time counsel has practiced law and nature of his or her practice; and

(d) Whether the same counsel served at both the trial and special sentencing proceeding, and if not, why not.

(6) General considerations, including:

(a) Whether the race and/or ethnic origin of the defendant, victim, or any witness was an apparent factor at trial;

(b) What percentage of the county population is the same race and/or ethnic origin of the defendant;

(c) Whether members of the defendant's or victim's race and/or ethnic origin were represented on the jury;

(d) Whether there was evidence that such members were systematically excluded from the jury;

(e) Whether the sexual orientation of the defendant, victim, or any witness was a factor in the trial;

(f) Whether any specific instruction was given to the jury to exclude race, ethnic origin, or sexual orientation as an issue;

(g) Whether there was extensive publicity concerning the case in the community;

(h) Whether the jury was instructed to disregard such publicity;

(i) Whether the jury was instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when considering its verdict or its findings in the special sentencing proceeding;

(j) The nature of the evidence resulting in such instruction; and

(k) General comments of the trial judge concerning the appropriateness of the sentence considering the crime, defendant, and other relevant factors.

(7) Information about the chronology of the case, including the date that:

(a) The defendant was arrested;

(b) Trial began;

(c) The verdict was returned;

(d) Post-trial motions were ruled on;

(e) Special sentencing proceeding began;

(f) Sentence was imposed;

(g) Trial judge's report was completed; and

(h) Trial judge's report was filed.

(8) The trial judge shall sign and date the questionnaire when it is completed. [1981 c 138 § 12.]

10.95.130 Questions posed for determination by supreme court in death sentence review—Review in addition to appeal—Consolidation of review and appeal.

(1) The sentence review required by RCW 10.95.100 shall be in addition to any appeal. The sentence review and an appeal shall be consolidated for consideration. The defendant and the prosecuting attorney may submit briefs within the time prescribed by the court and present oral argument to the court.

(2) With regard to the sentence review required by *this act, the supreme court of Washington shall determine:

(a) Whether there was sufficient evidence to justify the affirmative finding to the question posed by RCW 10.95.060(4); and

(b) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. For the purposes of this subsection, "similar cases" means cases reported in the Washington Reports or Washington Appellate Reports since January 1, 1965, in which the judge or jury considered the imposition of capital punishment regardless of whether it was imposed or executed, and cases in which reports have been filed with the supreme court under RCW 10.95.120; and

(c) Whether the sentence of death was brought about through passion or prejudice. [1981 c 138 § 13.]

*Reviser's note: For meaning of "this act," see note following RCW 10.95.100.

10.95.140 Invalidation of sentence, remand for resentencing—Affirmation of sentence, remand for execution. Upon completion of a sentence review:

(1) The supreme court of Washington shall invalidate the sentence of death and remand the case to the trial court for resentencing in accordance with RCW 10.95-.090 if:

(a) The court makes a negative determination as to the question posed by RCW 10.95.130(2)(a); or

(b) The court makes an affirmative determination as to either of the questions posed by RCW 10.95.130(2)(b) or (c).

(2) The court shall affirm the sentence of death and remand the case to the trial court for execution in accordance with RCW 10.95.160 if:

(a) The court makes an affirmative determination as to the question posed by RCW 10.95.130(2)(a); and

(b) The court makes a negative determination as to the question posed by RCW 10.95.130(2)(b) and (c). [1981 c 138 § 14.]

10.95.150 Time limit for deciding appeal or review of death sentence and filing opinion. In all cases in which a sentence of death has been imposed, the appeal, if any, and sentence review to or by the supreme court of Washington shall be decided and an opinion on the merits shall be filed within one year of receipt by the clerk of the supreme court of Washington of the verbatim report of proceedings and clerk's papers filed under RCW 10.95.110. If this time requirement is not met, the chief justice of the supreme court of Washington shall state on the record the extraordinary and compelling circumstances causing the delay and the facts supporting such circumstances. A failure to comply with the time requirements of this subsection shall in no way preclude the ultimate execution of a sentence of death. [1981 c 138 § 15.]

10.95.160 Death warrant—Issuance—Form—Time for execution of judgment and sentence. If a death sentence is affirmed and the case remanded to the trial court as provided in RCW 10.95.140(2), a death warrant shall forthwith be issued by the clerk of

the trial court, which shall be signed by a judge of the trial court and attested by the clerk thereof under the seal of the court. The warrant shall be directed to the superintendent of the state penitentiary and shall state the conviction of the person named therein and the judgment and sentence of the court, and shall appoint a day on which the judgment and sentence of the court shall be executed by the superintendent, which day shall not be less than thirty nor more than ninety days from the date the trial court receives the remand from the supreme court of Washington. [1981 c 138 § 16.]

10.95.170 Imprisonment of defendant. The defendant shall be imprisoned in the state penitentiary within ten days after the trial court enters a judgment and sentence imposing the death penalty and shall be imprisoned both prior to and subsequent to the issuance of the death warrant as provided in RCW 10.95.160. During such period of imprisonment, the defendant shall be confined in the segregation unit, where the defendant may be confined with other prisoners not under sentence of death, but prisoners under sentence of death shall be assigned to single-person cells. [1983 c 255 § 1; 1981 c 138 § 17.]

Severability—1983 c 255: See RCW 72.74.900.

Convicted female persons, commitment and procedure as to death sentences: RCW 72.15.060.

10.95.180 Death penalty—How executed. (1) The punishment of death shall be supervised by the superintendent of the penitentiary and shall be inflicted either by hanging by the neck or, at the election of the defendant, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the defendant is dead. In any case, death shall be pronounced by a licensed physician.

(2) All executions, for both men and women, shall be carried out within the walls of the state penitentiary. [1986 c 194 § 1; 1981 c 138 § 18.]

10.95.190 Death warrant—Record—Return to trial court. (1) The superintendent of the state penitentiary shall keep in his or her office as part of the public records a book in which shall be kept a copy of each death warrant together with a complete statement of the superintendent's acts pursuant to such warrants.

(2) Within twenty days after each execution of a sentence of death, the superintendent of the state penitentiary shall return the death warrant to the clerk of the trial court from which it was issued with the superintendent's return thereon showing all acts and proceedings done by him or her thereunder. [1981 c 138 § 19.]

10.95.200 Proceedings for failure to execute on day named. Whenever the day appointed for the execution of a defendant shall have passed, from any cause whatever, without the execution of such defendant having occurred, the trial court which issued the original death warrant shall issue a new death warrant in accordance with RCW 10.95.160. The defendant's presence before

the court is not required. However, nothing in this section shall be construed as restricting the defendant's right to be represented by counsel in connection with issuance of a new death warrant. [1987 c 286 § 1; 1981 c 138 § 20.]

10.95.900 Severability—1981 c 138. 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. [1981 c 138 § 22.]

Chapter 10.97

WASHINGTON STATE CRIMINAL RECORDS PRIVACY ACT

Sections

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10.97.120	Penalty for violation of chapter—Criminal prosecution not to affect civil action.

Records of rape crisis centers not available as part of discovery: RCW 70.125.065.

10.97.010 Declaration of policy. The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, confidentiality, and security of criminal history record information and victim, witness, and complainant record information as defined in this chapter. [1977 ex.s. c 314 § 1.]

10.97.020 Short title. This chapter may be cited as the Washington State Criminal Records Privacy Act. [1977 ex.s. c 314 § 2.]

Reviser's note: The phrase "This 1977 amendatory act" has been changed to "This chapter." This 1977 amendatory act [1977 ex.s. c 314] consists of chapter 10.97 RCW and the amendments of RCW 42.17.310, 43.43.705, 43.43.710, 43.43.730, and 43.43.810.

10.97.030 Definitions. For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, other than juveniles, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including sentences, correctional supervision, and release. The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130 as now existing or hereafter amended;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330 as now existing or hereafter amended;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal, or acquittal: *Provided, however*, That a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection,

apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination. [1979 ex.s. c 36 § 1; 1979 c 158 § 5; 1977 ex.s. c 314 § 3.]

10.97.040 Dissemination of information shall state disposition of charge—Current and complete information required—Exceptions. No criminal justice agency shall disseminate criminal history record information pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, unless the record disseminated states the disposition of such charge to the extent dispositions have been made at the time of the request for the information: *Provided, however*, That if a disposition occurring within ten days immediately preceding the dissemination has not been reported to the agency disseminating the criminal history record information, or if information has been received by the agency within the seventy-two hours immediately preceding the dissemination, that information shall not be required to be included in the dissemination: *Provided further*, That when another criminal justice agency requests criminal history record information, the disseminating agency may disseminate specific facts and incidents which are within its direct knowledge without furnishing disposition data as otherwise required by this section, unless the disseminating agency has received such disposition data from either: (1) the state patrol, or (2) the court or other criminal justice agency required to furnish disposition data pursuant to RCW 10.97.045.

No criminal justice agency shall disseminate criminal history record information which shall include information concerning a felony or gross misdemeanor without first making inquiry of the identification section of the

Washington state patrol for the purpose of obtaining the most current and complete information available, unless one or more of the following circumstances exists:

(1) The information to be disseminated is needed for a purpose in the administration of criminal justice for which time is of the essence and the identification section is technically or physically incapable of responding within the required time;

(2) The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of the agency which disseminates the information;

(3) The full information requested and to be disseminated is contained in a criminal history record information summary received from the identification section by the agency which is to make the dissemination not more than thirty days preceding the dissemination to be made;

(4) The statute, executive order, court rule, or court order pursuant to which the information is to be disseminated refers solely to information in the files of the agency which makes the dissemination;

(5) The information requested and to be disseminated is for the express purpose of research, evaluative, or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is directly sought; or

(6) A person who is the subject of the record requests the information and the agency complies with the requirements in RCW 10.97.080 as now or hereafter amended. [1979 ex.s. c 36 § 2; 1977 ex.s. c 314 § 4.]

10.97.045 Disposition of criminal charge data to be furnished agency initiating criminal history record and state patrol. Whenever a court or other criminal justice agency reaches a disposition of a criminal proceeding, the court or other criminal justice agency shall furnish the disposition data to the agency initiating the criminal history record for that charge and to the identification section of the Washington state patrol as required under RCW 43.43.745. [1979 ex.s. c 36 § 6.]

10.97.050 Unrestricted dissemination of certain information—Dissemination of other information to certain persons or for certain purposes—Records of dissemination, contents. (1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain

the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates; and

(d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year. [1977 ex.s. c 314 § 5.]

10.97.060 Deletion of certain information, conditions. Criminal history record information which consists of nonconviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to

inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of nonconviction data shall be deleted upon the request of the person who is the subject of the record: *Provided, however,* That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

- (1) The disposition was a deferred prosecution or similar diversion of the alleged offender;
- (2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;
- (3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event. [1977 ex.s. c 314 § 6.]

10.97.070 Discretionary disclosure of suspect's identity to victim. (1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress. Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

(2) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process. [1977 ex.s. c 314 § 7.]

10.97.080 Inspection of information by subject—Limitations—Rules governing—Challenge of records and correction of information—Dissemination of corrected information. All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see

the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.17 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information. [1979 ex.s. c 36 § 3; 1977 ex.s. c 314 § 8.]

10.97.090 Administration of act by state patrol—Powers and duties. The Washington state patrol is hereby designated the agency of state government responsible for the administration of the 1977 Washington State Criminal Records Privacy Act. The Washington state patrol may adopt any rules and regulations necessary for the performance of the administrative functions provided for in this chapter.

The Washington state patrol shall have the following specific administrative duties:

(1) To establish by rule and regulation standards for the security of criminal history information systems in order that such systems and the data contained therein be adequately protected from fire, theft, loss, destruction, other physical hazard, or unauthorized access;

(2) To establish by rule and regulation standards for personnel employed by criminal justice of other state and local government agencies in positions with responsibility for maintenance and dissemination of criminal history record information; and

(3) To contract with the Washington state auditor or other public or private agency, organization, or individual to perform audits of criminal history record information systems. [1979 ex.s. c 36 § 4; 1977 ex.s. c 314 § 9.]

10.97.100 Fees for dissemination of information. Criminal justice agencies shall be authorized to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons other than criminal justice agencies. [1977 ex.s. c 314 § 10.]

10.97.110 Action for injunction and damages for violation of chapter—Measure of damages—Action not to affect criminal prosecution. Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of this chapter. [1979 ex.s. c 36 § 5; 1977 ex.s. c 314 § 11.]

10.97.120 Penalty for violation of chapter—Criminal prosecution not to affect civil action. Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law. [1977 ex.s. c 314 § 12.]

Chapter 10.98

CRIMINAL JUSTICE INFORMATION ACT

Sections	
10.98.010	Purpose.
10.98.020	Short title.
10.98.030	Source of conviction histories.
10.98.040	Definitions.
10.98.050	Fingerprints, identifying data, and disposition reports from various officials.
10.98.060	Arrest and fingerprint form.

10.98.070	Participation in national crime information center interstate identification index.
10.98.080	State identification number, furnishing of.
10.98.090	Disposition forms—Coding.
10.98.100	Compliance audit of disposition reports.
10.98.110	Tracking of felony cases.
10.98.130	Reporting of admissions and releases by local jails—Information required.
10.98.140	Criminal justice information—Forecasting, felons, sentences.
10.98.150	Release of information on suspected or convicted felons.
10.98.160	Procedures, development considerations—Executive committee, review and recommendations.

10.98.010 Purpose. The purpose of this chapter is to provide a system of reporting and disseminating felony criminal justice information that provides: (1) Timely and accurate criminal histories for filing and sentencing under the sentencing reform act of 1981, (2) identification and tracking of felons, and (3) data for state-wide planning and forecasting of the felon population. [1984 c 17 § 1.]

10.98.020 Short title. This chapter may be known and cited as the criminal justice information act. [1984 c 17 § 2.]

10.98.030 Source of conviction histories. The Washington state patrol *identification and criminal history section as established in RCW 43.43.700 shall be the primary source of felony conviction histories for filings, plea agreements, and sentencing on felony cases. [1984 c 17 § 3.]

***Reviser's note:** The "identification and criminal history" section has been redesignated the "identification, child abuse, and criminal history" section. See RCW 43.43.700.

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

(1) "Arrest and fingerprint form" means the reporting form prescribed by the *identification and criminal history section to initiate compiling arrest and identification information.

(2) "Chief law enforcement officer" includes the sheriff or director of public safety of a county, the chief of police of a city or town, and chief officers of other law enforcement agencies operating within the state.

(3) "Department" means the department of corrections.

(4) "Disposition" means the conclusion of a criminal proceeding at any stage it occurs in the criminal justice system. Disposition includes but is not limited to temporary or permanent outcomes such as charges dropped by police, charges not filed by the prosecuting attorney, deferred prosecution, defendant absconded, charges filed by the prosecuting attorney pending court findings such as not guilty, dismissed, guilty, or guilty—case appealed to higher court.

(5) "Disposition report" means the reporting form prescribed by the *identification and criminal history section to report the legal procedures taken after completing an arrest and fingerprint form. The disposition

report shall include but not be limited to the following types of information:

- (a) The type of disposition;
- (b) The statutory citation for the arrests;
- (c) The sentence structure if the defendant was convicted of a felony;
- (d) The state identification number; and
- (e) Identification information and other information that is prescribed by the *identification and criminal history section.

(6) "Fingerprints" means the fingerprints taken from arrested or charged persons under the procedures prescribed by the Washington state patrol *identification and criminal history section.

(7) "Prosecuting attorney" means the public or private attorney prosecuting a criminal case.

(8) "Section" refers to the Washington state patrol section on *identification and criminal history.

(9) "Sentence structure" means itemizing the components of the felony sentence. The sentence structure shall include but not be limited to the total or partial confinement sentenced, and whether the sentence is prison or jail, community supervision, fines, restitution, or community service. [1985 c 201 § 1; 1984 c 17 § 4.]

***Reviser's note:** The "identification and criminal history" section has been redesignated the "identification, child abuse, and criminal history" section. See RCW 43.43.700.

10.98.050 Fingerprints, identifying data, and disposition reports from various officials. (1) It is the duty of the chief law enforcement officer or the local director of corrections to transmit within seventy-two hours from the time of arrest to the section fingerprints together with other identifying data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney.

(2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney. [1987 c 450 § 6; 1985 c 201 § 2; 1984 c 17 § 5.]

10.98.060 Arrest and fingerprint form. The arrest and fingerprint form shall include but not be limited to the following:

- (1) Unique numbers associated with the arrest charges. The unique numbering system may be controlled by the local law enforcement agency, however the section shall approve of the numbering system and maintain a current catalog of approved local numbering systems. The purpose of the unique numbering system is to allow tracking of arrest charges through disposition;
- (2) An organization code;

- (3) Date of arrest;
- (4) Local identification number;
- (5) The prescribed fingerprints;
- (6) Individual identification information and other information prescribed by the section. [1984 c 17 § 6.]

10.98.070 Participation in national crime information center interstate identification index. The section shall be the sole recipient of arrest and fingerprint forms described in RCW 10.98.060, fingerprint forms described in RCW 43.43.760, and disposition reports for forwarding to the federal bureau of investigation as required for participation in the national crime information center interstate identification index. The section shall comply with national crime information center interstate identification index regulations to maintain availability of out-of-state criminal history information. [1984 c 17 § 7.]

10.98.080 State identification number, furnishing of. The section shall promptly furnish a state identification number to the originating agency and to the prosecuting attorney who received a copy of the arrest and fingerprint form. In the case of juvenile felony-like adjudications, the section shall furnish, upon request, the state identification number to the juvenile information section of the administrator for the courts. [1985 c 201 § 3; 1984 c 17 § 8.]

10.98.090 Disposition forms—Coding. (1) In all cases where an arrest and fingerprint form is transmitted to the section, the originating agency shall code the form indicating which agency is initially responsible for reporting the disposition to the section. Coding shall include but not be limited to the prosecuting attorney, district court, municipal court, or the originating agency.

(2) In the case of a superior court or felony disposition, the prosecuting attorney shall promptly transmit the completed disposition form to the section. In the case of a felony conviction, the prosecuting attorney shall attach a copy of the judgment and sentence form to the disposition form transmitted to the section. In the case of a lower court disposition, the district or municipal court shall promptly transmit the completed disposition form to the section. For all other dispositions the originating agency shall promptly transmit the completed disposition form to the section.

(3) Until October 1, 1985, the prosecuting attorney, upon a felony conviction, shall also forward a copy of the judgment and sentence form to the department. [1985 c 201 § 4; 1984 c 17 § 9.]

10.98.100 Compliance audit of disposition reports. The section shall administer a compliance audit at least once annually for each prosecuting attorney, district and municipal court, and originating agency to ensure that all disposition reports have been received and added to the criminal offender record information described in RCW 43.43.705. The section shall prepare listings of all arrests charged and listed in the criminal offender record

information for which no disposition report has been received and which has been outstanding for more than nine months since the date of arrest. Each prosecuting attorney, district and municipal court, and originating agency shall be furnished a list of outstanding disposition reports. Cases pending prosecution shall be considered outstanding dispositions in the compliance audit. Within forty-five days, the prosecuting attorney, district and municipal court, and originating agency shall provide the section with a current disposition report for each outstanding disposition. The section shall assist prosecuting attorneys with the compliance audit by cross-checking outstanding cases with the administrator for the courts and the department of corrections. The section may provide technical assistance to prosecuting attorneys, district or municipal courts, or originating agencies for their compliance audits. The results of compliance audits shall be published annually and distributed to legislative committees dealing with criminal justice issues, the office of financial management, and criminal justice agencies and associations. [1985 c 201 § 5; 1984 c 17 § 10.]

10.98.110 Tracking of felony cases. (1) The department shall maintain records to track felony cases following convictions in Washington state and felony cases under the jurisdiction of Washington state pursuant to interstate compact agreements.

(2) Tracking shall begin at the time the department receives a disposition form from a prosecuting attorney and shall include the collection and updating of felons' criminal records from conviction through completion of sentence.

(3) The department of corrections shall collect information for tracking felons from its offices and from information provided by county clerks, the Washington state patrol *identification and criminal history section, the office of financial management, and any other public or private agency that provides services to help individuals complete their felony sentences. [1987 c 462 § 2; 1984 c 17 § 11.]

*Reviser's note: The "identification and criminal history" section has been redesignated the "identification, child abuse, and criminal history" section. See RCW 43.43.700.

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.130 Reporting of admissions and releases by local jails—Information required. Local jails shall report to the office of financial management and that office shall transmit to the department the information on all persons convicted of felonies or incarcerated for non-compliance with a felony sentence who are admitted or released from the jails and shall promptly respond to requests of the department for such data. Information transmitted shall include but not be limited to the state identification number, whether the reason for admission to jail was a felony conviction or noncompliance with a felony sentence, and the dates of the admission and release. [1987 c 462 § 3; 1984 c 17 § 13.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.140 Criminal justice information—Forecasting, felons, sentences. (1) The section, the department, and the office of financial management shall be the primary sources of information for criminal justice forecasting. The information maintained by these agencies shall be complete, accurate, and sufficiently timely to support state criminal justice forecasting.

(2) The office of financial management shall be the official state agency for the sentenced felon jail forecast. This forecast shall provide at least a six-year projection and shall be published by December 1 of every even-numbered year beginning with 1986. The office of financial management shall seek advice regarding the assumptions in the forecast from criminal justice agencies and associations.

(3) The sentencing guidelines commission shall keep records on all sentencings above or below the standard range defined by chapter 9.94A RCW. As a minimum, the records shall include the name of the offender, the crimes for which the offender was sentenced, the name and county of the sentencing judge, and the deviation from the standard range. Such records shall be made available to public officials upon request. [1987 c 462 § 4; 1985 c 201 § 6; 1984 c 17 § 14.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

10.98.150 Release of information on suspected or convicted felons. The section and the department shall provide prompt responses to the requests of law enforcement agencies and jails regarding the status of suspected or convicted felons. Dissemination of individual identities, criminal histories, or the whereabouts of a suspected or convicted felon shall be in accordance with chapter 10.97 RCW, the Washington state criminal records privacy act. [1984 c 17 § 15.]

10.98.160 Procedures, development considerations—Executive committee, review and recommendations. In the development and modification of the procedures, definitions, and reporting capabilities of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrator for the courts, local law enforcement agencies, jailers, the sentencing guidelines commission, the board of prison terms and paroles, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. An executive committee appointed by the heads of the department, the Washington state patrol, and the office of financial management shall review and provide recommendations for development and modification of the section, the department, and the office of financial management's felony criminal information systems. [1987 c 462 § 5; 1984 c 17 § 16.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

Chapter 10.99

DOMESTIC VIOLENCE—OFFICIAL RESPONSE

Sections

10.99.010	Purpose—Intent.
10.99.020	Definitions.
10.99.030	Law enforcement officers—Training, powers, duties.
10.99.040	Restrictions upon and duties of court.
10.99.045	Appearances by defendant—Orders prohibiting contact.
10.99.050	Restriction or prohibition of contact with victim—Violation, penalties—Written order—Procedures.
10.99.055	Enforcement of orders against defendants.
10.99.060	Notification of victim of prosecution decision—Description of procedures available to institute criminal proceedings.
10.99.070	Liability of peace officers.
10.99.900	Severability—1979 ex.s. c 105.

Arrest without warrant in domestic violence cases: RCW 10.31.100(2).

Domestic violence prevention: Chapter 26.50 RCW.

Victims, survivors, and witnesses of crimes: Chapter 7.69 RCW.

10.99.010 Purpose—Intent. The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship. [1979 ex.s. c 105 § 1.]

10.99.020 Definitions. (Effective until July 1, 1988.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Family or household members" means spouses, former spouses, adult persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(2) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree (RCW 9A.36.010);
- (b) Assault in the second degree (RCW 9A.36.020);
- (c) Simple assault (RCW 9A.36.040);
- (d) Reckless endangerment (RCW 9A.36.050);
- (e) Coercion (RCW 9A.36.070);

- (f) Burglary in the first degree (RCW 9A.52.020);
 - (g) Burglary in the second degree (RCW 9A.52.030);
 - (h) Criminal trespass in the first degree (RCW 9A.52.070);
 - (i) Criminal trespass in the second degree (RCW 9A.52.080);
 - (j) Malicious mischief in the first degree (RCW 9A.48.070);
 - (k) Malicious mischief in the second degree (RCW 9A.48.080);
 - (l) Malicious mischief in the third degree (RCW 9A.48.090);
 - (m) Kidnapping in the first degree (RCW 9A.40.020);
 - (n) Kidnapping in the second degree (RCW 9A.40.030);
 - (o) Unlawful imprisonment (RCW 9A.40.040);
 - (p) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence (RCW 26.09.300);
 - (q) Violation of the provisions of a protection order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, or 26.50.130);
 - (r) Rape in the first degree *(RCW 9.79.170); and
 - (s) Rape in the second degree *(RCW 9.79.180).
- (3) "Victim" means a family or household member who has been subjected to domestic violence. [1984 c 263 § 20; 1979 ex.s. c 105 § 2.]

***Reviser's note:** RCW 9.79.170 and 9.79.180 were recodified as RCW 9A.44.040 and 9A.44.050, respectively, by 1979 ex.s. c 245 § 17.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Domestic violence defined under the domestic violence prevention act: RCW 26.50.010.

10.99.020 Definitions. (Effective July 1, 1988.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Family or household members" means spouses, former spouses, adult persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(2) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree (RCW 9A.36.011);
- (b) Assault in the second degree (RCW 9A.36.021);
- (c) Assault in the third degree (RCW 9A.36.031);
- (d) Assault in the fourth degree (RCW 9A.36.041);
- (e) Reckless endangerment (RCW 9A.36.050);
- (f) Coercion (RCW 9A.36.070);
- (g) Burglary in the first degree (RCW 9A.52.020);
- (h) Burglary in the second degree (RCW 9A.52.030);
- (i) Criminal trespass in the first degree (RCW 9A.52.070);
- (j) Criminal trespass in the second degree (RCW 9A.52.080);
- (k) Malicious mischief in the first degree (RCW 9A.48.070);

(l) Malicious mischief in the second degree (RCW 9A.48.080);

(m) Malicious mischief in the third degree (RCW 9A.48.090);

(n) Kidnapping in the first degree (RCW 9A.40.020);

(o) Kidnapping in the second degree (RCW 9A.40.030);

(p) Unlawful imprisonment (RCW 9A.40.040);

(q) Violation of the provisions of a restraining order restraining the person or excluding the person from a residence (RCW 26.09.300);

(r) Violation of the provisions of a protection order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, or 26.50.130);

(s) Rape in the first degree (RCW 9A.44.040); and

(t) Rape in the second degree (RCW 9A.44.050).

(3) "Victim" means a family or household member who has been subjected to domestic violence. [1986 c 257 § 8; 1984 c 263 § 20; 1979 ex.s. c 105 § 2.]

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 3–10: See note following RCW 9A.04.110.

Effective date—**Severability**—1984 c 263: See RCW 26.50.901 and 26.50.902.

Domestic violence defined under the domestic violence prevention act: RCW 26.50.010.

10.99.030 Law enforcement officers—Training, powers, duties. (1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(3)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(4) When a peace officer responds to a domestic violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community, and giving each person immediate notice of the legal rights and remedies available. The notice shall include handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court.

Information about shelters and alternatives to domestic violence is available from a state-wide twenty-four-hour toll-free hotline at 1-800-562-6025. The battered women's shelter and other resources in your area are — (include local information)"

(5) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(6) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

(7) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(8) Records kept pursuant to subsections (3) and (7) of this section shall be made identifiable by means of a departmental code for domestic violence. [1984 c 263 § 21; 1981 c 145 § 5; 1979 ex.s. c 105 § 3.]

Effective date—**Severability**—1984 c 263: See RCW 26.50.901 and 26.50.902.

10.99.040 Restrictions upon and duties of court. (1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: *Provided*, That the court may order a criminal defense attorney not to disclose to his client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim. The no-contact order shall also be issued in writing as soon as possible. If the court has probable cause to believe that the person charged or arrested is likely to use or display or threaten to use a deadly weapon as defined in RCW 9A.04.110 in any further acts of violence, the court may also require that person to surrender any deadly weapon in that person's immediate possession or control, or subject to that person's immediate possession or control, to the sheriff of the county or chief of police of the municipality in which that person resides or to the defendant's counsel for safekeeping.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended.

(4) Wilful violation of a court order issued under subsection (2) or (3) of this section is a misdemeanor. The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest. A certified copy of the order shall be provided to the victim. If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed. Such orders need not be entered into the computer information system in this state which is used by law enforcement agencies to list outstanding warrants.

(5) Whenever an order prohibiting contact is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year or until the expiration date specified on the order into any computer information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. [1985 c 303 § 10; 1984 c 263 § 22; 1983 c 232 § 7; 1981 c 145 § 6; 1979 ex.s. c 105 § 4.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

Child abuse, temporary restraining order: RCW 26.44.063.

Orders for protection in cases of domestic violence: RCW 26.50.030, 26.50.070.

Temporary restraining order: RCW 26.09.060.

10.99.045 Appearances by defendant—Orders prohibiting contact. (1) A defendant arrested for an offense involving domestic violence as defined by RCW 10.99.020(2) shall be required to appear in person before a magistrate within one judicial day after the arrest.

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by RCW 10.99.020(2) and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. If the court has probable cause to believe that the defendant is likely to use or display or threaten to use a deadly weapon as defined in RCW 9A.04.110 in any further acts of violence, as one of the conditions of pretrial release, the court may require the defendant to surrender any deadly weapon in the defendant's immediate possession or control, or subject to the defendant's immediate possession or control, to the sheriff of the county or chief of police of the municipality in which the defendant resides or to the defendant's counsel for safekeeping. The decision of the judge and findings of fact in support thereof shall be in writing.

(4) Appearances required pursuant to this section are mandatory and cannot be waived.

(5) The no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to the procedures outlined in RCW 10.99.040 (2) and (4). [1984 c 263 § 23; 1983 c 232 § 8; 1981 c 145 § 7.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

10.99.050 Restriction or prohibition of contact with victim—Violation, penalties—Written order—Procedures. (1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2) Wilful violation of a court order issued under this section 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 10.99 RCW and will subject a violator to arrest.

(3) Whenever an order prohibiting contact is issued pursuant to this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified

in the order. Upon receipt of the copy of the order the law enforcement agency shall forthwith enter the order for one year into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. [1985 c 303 § 12; 1984 c 263 § 24; 1979 ex.s. c 105 § 5.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

10.99.055 Enforcement of orders against defendants.

A peace officer in this state shall enforce an order issued by any court in this state restricting a defendant's ability to have contact with a victim by arresting and taking the defendant into custody, pending release on bail, personal recognizance, or court order, when the officer has probable cause to believe that the defendant has violated the terms of that order. [1984 c 263 § 25; 1983 c 232 § 9; 1981 c 145 § 8.]

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 c 232: See note following RCW 9.41.010.

10.99.060 Notification of victim of prosecution decision—Description of procedures available to institute criminal proceedings. The public attorney responsible for making the decision whether or not to prosecute shall advise the victim of that decision within five days, and, prior to making that decision shall advise the victim, upon the victim's request, of the status of the case. Notification to the victim that charges will not be filed shall include a description of the procedures available to the victim in that jurisdiction to initiate a criminal proceeding. [1979 ex.s. c 105 § 6.]

10.99.070 Liability of peace officers. A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident. [1979 ex.s. c 105 § 7.]

10.99.900 Severability—1979 ex.s. c 105. 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. [1979 ex.s. c 105 § 9.]

Title 11

PROBATE AND TRUST LAW

(Formerly: Probate Law and Procedure—1965 Act)

Chapters

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- 11.05 Uniform simultaneous death act.
- 11.08 Escheats.
- 11.12 Wills.
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Chapter 11.02 GENERAL PROVISIONS

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- 11.02.001 Section headings in Title 11 RCW not part of law.
- 11.02.005 Definitions and use of terms.
- 11.02.070 Community property—Disposition—Probate administration of.
- 11.02.080 Application and construction of act as to wills, proceedings, guardians, accrued rights and pre-executed instruments—Severability—Effective date—1974 ex.s. c 117.
- 11.02.090 Certain provisions of written instruments deemed non-testamentary—Creditors' rights—Safety deposit repository leases.
- 11.02.900 Short title—Washington trust act of 1984.
- 11.02.901 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985.
- 11.02.902 Purpose—1985 c 30.
- 11.02.903 Severability—1985 c 30.

11.02.001 Section headings in Title 11 RCW not part of law. Section headings, as found in Title 11 RCW, do not constitute any part of the law. [1985 c 30 § 3. Prior: 1984 c 149 § 179.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.02.005 Definitions and use of terms. 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 estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, 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 intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of the intestate's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.

(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, 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 and includes all codicils.

(9) "Codicil" means an instrument that is validly executed in the manner provided by this title for a will and that refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto.

(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) Words that import the singular number may also be applied to the plural of persons and things.

(16) Words importing the masculine gender only may be extended to females also. [1985 c 30 § 4. Prior: 1984 c 149 § 4; 1977 ex.s. c 80 § 14; 1975-'76 2nd ex.s. c 42 § 23; 1965 c 145 § 11.02.005. Former RCW sections: Subd. (3), RCW 11.04.110; subd. (4), RCW 11.04.010; subd. (5), RCW 11.04.100; subd. (6), RCW 11.04.280; subd. (7), RCW 11.04.010; subd. (8) and (9), RCW 11.12.240; subd. (14) and (15), RCW 11.02.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—1984 c 149: "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." [1984 c 149 § 181.]

Effective dates—1984 c 149: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984], except sections 1 through 98, 100 through 138, and 147 through 178 of this act which shall take effect January 1, 1985." [1984 c 149 § 180.] For codification of 1984 c 149 see Codification Tables, Volume 0.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Effect of decree of adoption: RCW 26.33.260.

Kindred of the half blood: RCW 11.04.035.

11.02.070 Community property—Disposition—Probate administration of. Upon the death of a decedent, a one-half share of the community property shall be confirmed to the surviving spouse, and the other one-half share shall be subject to testamentary disposition by the decedent, or shall descend as provided in chapter 11.04 RCW. The whole of the community property shall be subject to probate administration for all purposes of this title, including the payment of obligations and debts of the community, the award in lieu of homestead, the allowance for family support, and any other matter for which the community property would be responsible or liable if the decedent were living. [1967 c 168 § 1.]

Effective date—1967 c 168: "The provisions of this act shall take effect on July 1, 1967." [1967 c 168 §§ 16, 19.] For codification of 1967 c 168, see Codification Tables, Volume 0.

Descent and distribution of community property: RCW 11.04.015(1).

Disposition of quasi-community property: RCW 26.16.230.

11.02.080 Application and construction of act as to wills, proceedings, guardians, accrued rights and pre-executed instruments—Severability—Effective date—1974 ex.s. c 117. On and after October 1, 1974:

(1) The provisions of *this 1974 amendatory act shall apply to any wills of decedents dying thereafter;

(2) The provisions of *this 1974 amendatory act shall apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of *this 1974 amendatory act;

(3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on October 1, 1974, continues to hold the appointment, has the powers conferred by *this 1974 amendatory act and is subject to the duties imposed with respect to any act occurring or done thereafter;

(4) An act done before October 1, 1974 in any proceeding and any accrued right is not impaired by *this 1974 amendatory act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before October 1, 1974, the provisions shall remain in force with respect to that right;

(5) Any rule of construction or presumption provided in *this 1974 amendatory act applies to instruments executed before October 1, 1974 unless there is a clear indication of a contrary intent. [1974 ex.s. c 117 § 1.]

***Reviser's note:** "this 1974 amendatory act" [1974 ex.s. c 117] consists of RCW 11.02.080, 11.02.090, 11.28.131, 11.28.185, 11.28.330, 11.28.340, 11.44.066, 11.62.010, 11.62.020, 11.68.050, 11.68.060, 11.68.070, 11.68.080, 11.68.090, 11.68.100, 11.68.110, 11.68.120, 11.94.010, 11.94.020 and amendments to RCW 11.04.015, 11.12.120, 11.20.020, 11.28.010, 11.28.070, 11.28.110, 11.28.237, 11.28.280, 11.40.010, 11.40.020, 11.40.030, 11.40.040, 11.40.060, 11.40.100, 11.40.110, 11.44.025, 11.44.070, 11.52.010, 11.52.012, 11.52.020, 11.52.022, 11.68.010, 11.68.020, 11.68.030, 11.68.040, 11.76.080, 11.76.090, 11.76.095, 30.04.260, 30.20.020, 32.12.020, 33.20.080 and 49.48.120 and the repeal of RCW 11.28.130, 11.28.180, 11.28.200, 11.40.050, 11.44.055, 11.44.065 and 11.44.080.

Legislative directive—Part headings not part of law: "(1) Sections 4 and 5 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(2) Sections 52 and 53 of this 1974 amendatory act shall constitute a new chapter in Title 11 RCW.

(3) Part headings employed in this 1974 amendatory act do not constitute any part of the law and shall not be codified by the code reviser and shall not become a part of the Revised Code of Washington." [1974 ex.s. c 117 § 2.]

Reviser's note: (1) "Sections 4 and 5 of this 1974 amendatory act" are codified as RCW 11.62.010 and 11.62.020.

(2) "Sections 52 and 53 of this 1974 amendatory act" are codified as RCW 11.94.010 and 11.94.020.

Severability—1974 ex.s. c 117: "If any provision of this 1974 amendatory 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." [1974 ex.s. c 117 § 3.]

Effective date—1974 ex.s. c 117: "This 1974 amendatory act shall take effect October 1, 1974." [1974 ex.s. c 117 § 56.]

11.02.090 Certain provisions of written instruments deemed nontestamentary—Creditors' rights—Safety deposit repository leases. (1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, joint tenancy, community property agreement, trust agreement, conveyance, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this title does not invalidate the instrument or any provision:

(a) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Nothing in this section limits the rights of creditors under other laws of this state.

(3) Any provision in a lease of a safety deposit repository to the effect that two or more persons shall have access to the repository, or that purports to create a joint tenancy in the repository or in the contents of the repository, or that purports to vest ownership of the contents of the repository in the surviving lessee, is ineffective to create joint ownership of the contents of the repository or to transfer ownership at death of one of the lessees to the survivor. Ownership of the contents of the repository and devolution of title to those contents is determined according to rules of law without regard to the lease provisions. [1974 ex.s. c 117 § 54.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.02.900 Short title—Washington trust act of 1984. Chapter 149, Laws of 1984, as amended and reenacted in chapters 8, 9, 10, 11, 23, 30, and 31, Laws of 1985 shall be known as the Washington trust act of 1984. [1985 c 30 § 2.]

11.02.901 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985. (1) Nothing in chapter 8, 9, 10, 11, 23, 30, or 31, Laws of 1985 shall invalidate or nullify:

(a) Any instrument or property relationship that is executed and irrevocable as of the April 10, 1985; or

(b) Any action undertaken in a proceeding where the action was commenced before April 10, 1985, as long as the instrument, property relationship, or action complies with chapter 149, Laws of 1984.

(2) Except as specifically provided otherwise in chapter 149, Laws of 1984 as amended and reenacted in

1985, chapter 149, Laws of 1984 as amended and reenacted in 1985 shall apply to all instruments, property relationships, and proceedings existing on January 1, 1985. [1985 c 30 § 139.]

11.02.902 Purpose—1985 c 30. The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution. [1985 c 30 § 1.]

11.02.903 Severability—1985 c 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. [1985 c 30 § 144.]

Chapter 11.04

DESCENT AND DISTRIBUTION

Sections

11.04.015	Descent and distribution of real and personal estate.
11.04.035	Kindred of the half blood.
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11.04.060	Tenancy in dower and by curtesy abolished.
11.04.071	Survivorship as incident of tenancy by the entireties abolished.
11.04.081	Inheritance by and from any child not dependent upon marriage of parents.
11.04.085	Inheritance by adopted child.
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11.04.230	United States savings bond—Effect of death of co-owner.
11.04.240	United States savings bond—Effect of beneficiary's survival of registered owner.
11.04.250	When real estate vests—Rights of heirs.
11.04.270	Limitation of liability for debts.
11.04.290	Vesting of title.

Inheritance rights of slayers: Chapter 11.84 RCW.

11.04.015 Descent and distribution of real and personal estate. The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and RCW 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse. The surviving spouse shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse. The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation. [1974 ex.s. c 117 § 6; 1967 c 168 § 2; 1965 ex.s. c 55 § 1; 1965 c 145 § 11.04.015. Formerly RCW 11.04.020, 11.04.030, 11.04.050.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Appropriation to pay debts and expenses: RCW 11.56.150.

Community property

disposition: RCW 11.02.070.

generally: Chapter 26.16 RCW.

Escheats: Chapter 11.08 RCW.

"Net estate" defined: RCW 11.02.005(2).

Payment of claims where estate insufficient: RCW 11.76.150.

Priority of sale, etc., as between realty and personalty: RCW 11.56.015.

11.04.035 Kindred of the half blood. Kindred of the half blood shall inherit the same share which they would have inherited if they had been of the whole blood, unless the inheritance comes to the intestate by descent, devise, or gift from one of his ancestors, or kindred of such ancestor's blood, in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance: *Provided, however,* That the words "kindred of such ancestor's blood" and "blood of such ancestors" shall be construed to include any child lawfully adopted by one who is in fact of the blood of such ancestors. [1967 c 168 § 3; 1965 c 145 § 11.04.035. Formerly RCW 11.04.100, part.]

"Degree of kinship" defined: RCW 11.02.005(5).

11.04.041 Advancements. If a person dies intestate as to all his estate, property which he gave in his lifetime as an advancement to any person who, if the intestate had died at the time of making the advancement, would be entitled to inherit a part of his estate, shall be counted toward the advancee's intestate share, and to the extent that it does not exceed such intestate share shall be taken into account in computing the estate to be distributed. Every gratuitous inter vivos transfer is deemed to be an absolute gift and not an advancement unless shown to be an advancement. The advancement shall be considered as of its value at the time when the advancee came into possession or enjoyment or at the time of the death of the intestate, whichever first occurs. If the advancee dies before the intestate, leaving a lineal heir who takes from the intestate, the advancement shall be taken into account in the same manner as if it had been made directly to such heir. If such heir is entitled to a lesser share in the estate than the advancee would have been entitled had he survived the intestate, then the heir shall only be charged with such proportion of the advancement as the amount he would have inherited, had there been no advancement, bears to the amount which the advancee would have inherited, had there been no advancement. [1965 c 145 § 11.04.041. Formerly RCW 11.04.040, 11.04.120, 11.04.130, 11.04.140, 11.04.150, 11.04.160 and 11.04.170.]

11.04.060 Tenancy in dower and by curtesy abolished. The provisions of RCW 11.04.015, as to the inheritance of the husband and wife from each other take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished. [1965 c 145 § 11.04.060. Prior: Code 1881 § 3304; 1875 p 55 § 3; RRS § 1343.]

11.04.071 Survivorship as incident of tenancy by the entireties abolished. The right of survivorship as an incident of tenancy by the entireties is abolished. [1965 c 145 § 11.04.071.]

Joint tenancy: Chapter 64.28 RCW.

Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).

11.04.081 Inheritance by and from any child not dependent upon marriage of parents. For the purpose of inheritance to, through, and from any child, the effects and treatment of the parent-child relationship shall not depend upon whether or not the parents have been married. [1975-'76 2nd ex.s. c 42 § 24; 1965 c 145 § 11.04.081. Formerly RCW 11.04.080 and 11.04.090.]

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes all lawfully adopted children: RCW 11.02.005(4).

11.04.085 Inheritance by adopted child. A lawfully adopted child shall not be considered an "heir" of his natural parents for purposes of this title. [1965 c 145 § 11.04.085.]

Effect of decree of adoption: RCW 26.33.260.

"Issue" includes lawfully adopted children: RCW 11.02.005(4).

11.04.095 Inheritance from stepparent avoids escheat. If a person die leaving a surviving spouse and issue by a former spouse and leaving a will whereby all or substantially all of the deceased's property passes to the surviving spouse or having before death conveyed all or substantially all his or her property to the surviving spouse, and afterwards the latter dies without heirs and without disposing of his or her property by will so that except for this section the same would all escheat, the issue of the spouse first deceased who survive the spouse last deceased shall take and inherit from the spouse last deceased the property so acquired by will or conveyance or the equivalent thereof in money or other property; if such issue are all in the same degree of kinship to the spouse first deceased they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such spouse first deceased. [1965 c 145 § 11.04.095. Prior: 1919 c 197 § 1; RCW 11.08.010; RRS § 1356-1.]

11.04.230 United States savings bond—Effect of death of co-owner. If either co-owner of United States savings bonds registered in two names as co-owners (in the alternative) dies without having presented and surrendered the bond for payment to a federal reserve bank or the treasury department, the surviving co-owner will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.230. Prior: 1943 c 14 § 1; Rem. Supp. 1943 § 11548-60.]

11.04.240 United States savings bond—Effect of beneficiary's survival of registered owner. If the registered owner of United States savings bonds registered in the name of one person payable on death to another dies without having presented and surrendered the bond for payment or authorized reissue to a federal reserve bank or the treasury department, and is survived by the beneficiary, the beneficiary will be the sole and absolute owner of the bond. [1965 c 145 § 11.04.240. Prior: 1943 c 14 § 2; Rem. Supp. 1943 § 11548-61.]

11.04.250 When real estate vests—Rights of heirs. When a person dies seized of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his title shall vest immediately in his heirs or devisees, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: *Provided*, That no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands, tenements, or hereditaments so vested in such heirs or devisees, together with the rents, issues and profits thereof, shall be good and valid against all persons claiming adversely to the claims

of any such heirs, or devisees, excepting only the personal representative when appointed, and persons lawfully claiming under such personal representative; and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the personal representative and those lawfully claiming under such personal representative. [1965 c 145 § 11.04.250. Prior: 1895 c 105 § 1; RRS § 1366.]

Right to possession and management of estate: RCW 11.48.020.

11.04.270 Limitation of liability for debts. The estate of a deceased person shall not be liable for his debts unless letters testamentary or of administration be granted within six years from the date of the death of such decedent: *Provided, however,* That this section shall not affect liens upon specific property, existing at the date of the death of such decedent. [1965 c 145 § 11.04.270. Prior: 1929 c 218 § 1; 1895 c 105 § 3; RRS § 1368.]

Limitation of actions, tolling of statute: RCW 4.16.200.

11.04.290 Vesting of title. RCW 11.04.250 through 11.04.290 shall apply to community real property and also to separate estate; and upon the death of either husband or wife, title of all community real property shall vest immediately in the person or persons to whom the same shall go, pass, descend or be devised, as provided in RCW 11.04.015, subject to all the charges mentioned in RCW 11.04.250. [1965 c 145 § 11.04.290. Prior: 1895 c 105 § 5; RRS § 1370.]

Chapter 11.05

UNIFORM SIMULTANEOUS DEATH ACT

Sections

11.05.010	Devolution of property in case of simultaneous death of owners.
11.05.020	Procedure when beneficiaries die simultaneously.
11.05.030	Joint tenants—Simultaneous death.
11.05.040	Distribution of insurance policy when insured and beneficiary die simultaneously.
11.05.050	Scope of chapter limited.
11.05.900	Application of chapter to prior deaths.
11.05.910	Construction of chapter.

11.05.010 Devolution of property in case of simultaneous death of owners. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter. [1965 c 145 § 11.05.010. Prior: 1943 c 113 § 1; Rem. Supp. 1943 § 1370-1. Formerly RCW 11.04.180.]

11.05.020 Procedure when beneficiaries die simultaneously. Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries. [1965 c 145 § 11.05.020. Prior: 1943 c 113 § 2; Rem. Supp. 1943 § 1370-2. Formerly RCW 11.04.190.]

11.05.030 Joint tenants—Simultaneous death. Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived, and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants. [1965 c 145 § 11.05.030. Prior: 1943 c 113 § 3; Rem. Supp. 1943 § 1370-3. Formerly RCW 11.04.200.]

Joint tenancy: Chapter 64.28 RCW.

11.05.040 Distribution of insurance policy when insured and beneficiary die simultaneously. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. [1965 c 145 § 11.05.040. Prior: 1943 c 113 § 4; Rem. Supp. 1943 § 1370-4. Formerly RCW 11.04.210.]

Reviser's note: The subject matter of this section and RCW 11.05.050 relating to insurance also appears in RCW 48.18.390.

11.05.050 Scope of chapter limited. This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter. [1965 c 145 § 11.05.050. Prior: 1943 c 113 § 6; Rem. Supp. 1943 § 1370-6. Formerly RCW 11.04.220.]

Reviser's note: See note following RCW 11.05.040.

11.05.900 Application of chapter to prior deaths. This chapter shall not apply to the distribution of the property of a person who has died before it takes effect. [1965 c 145 § 11.05.900. Prior: 1943 c 113 § 5; Rem. Supp. 1943 § 1370-5.]

11.05.910 Construction of chapter. This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it. [1965 c 145 § 11.05.910. Prior: 1943 c 113 § 7; Rem. Supp. 1943 § 1370-7.]

Chapter 11.08
ESCHEATS

Sections	
11.08.101	Property of deceased inmates of state institutions—Disposition after two years.
11.08.111	Property of deceased inmates of state institutions—Disposition within two years.
11.08.120	Property of deceased inmates of state institutions—Sale—Disposition of proceeds.
11.08.140	Escheat for want of heirs.
11.08.150	Title to property vests in state at death of owner.
11.08.160	Jurisdiction, duties, of department of revenue.
11.08.170	Probate of escheat property—Notice to department of revenue.
11.08.180	Department of revenue to be furnished copies of documents and pleadings.
11.08.185	Escheat property—Records of department of revenue—Public record information.
11.08.200	Liability for use of escheated property.
11.08.205	Lease, sublease or rental of escheated real property—Authorized—Expenses—Distribution of proceeds.
11.08.210	Allowance of claims, etc.—Sale of property—Decree of distribution.
11.08.220	Certified copies of decree—Duties of commissioner of public lands.
11.08.230	Appearance and claim of heirs—Notices to department of revenue.
11.08.240	Limitation on filing claim.
11.08.250	Order of court on establishment of claim.
11.08.260	Payment of escheated funds to claimant.
11.08.270	Conveyance of escheated property to claimant.
11.08.280	Limitation when claimant is minor or incompetent not under guardianship.
11.08.290	Deposit of cash received by personal representative of escheat estate.

Action to recover property forfeited to state: RCW 7.56.120.

Banks, disposition of unclaimed personalty: RCW 30.44.150, 30.44.180 through 30.44.230.

Escheat of postal savings system accounts: Chapter 63.48 RCW.

Permanent common school fund, escheats as source of: RCW 28A.40.010.

Savings and loan associations, escheats: RCW 33.20.130, 33.40.110.

Social security benefits, payment to survivors or secretary of social and health services: RCW 11.66.010.

State land acquired by escheat, management: RCW 79.01.612.

Unclaimed estate, disposition: RCW 11.76.220.

Uniform unclaimed property act: Chapter 63.29 RCW.

11.08.101 Property of deceased inmates of state institutions—Disposition after two years. Where, upon the expiration of two years after the death of any inmate of any state institution, there remains in the custody of the superintendent of such institution, money or property belonging to said deceased inmate, the superintendent shall forward such money to the state treasurer for deposit in the general fund of the state, and shall report such transfer and any remaining property to the department of corrections, which department shall cause the sale of such property and proceeds thereof shall be forwarded to the state treasurer for deposit in the general fund. [1981 c 136 § 58; 1979 c 141 § 10; 1965 c 145 § 11.08.101. Prior: 1951 c 138 § 1; prior: 1923 c 113 § 1; RRS § 1363–1.]

Effective date—1981 c 136: See RCW 72.09.900.

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

State institutions: Title 72 RCW.

11.08.111 Property of deceased inmates of state institutions—Disposition within two years. Prior to the expiration of the two-year period provided for in RCW 11.08.101, the superintendent may transfer such money or property in his possession, upon request and satisfactory proof submitted to him, to the following designated persons:

(1) To the personal representative of the estate of such deceased inmate; or

(2) To the next of kin of the decedent, where such money and property does not exceed the value of one thousand dollars, and the person or persons requesting same shall have furnished an affidavit as to his or her being next of kin; or

(3) In the case of money, to the person who may have deposited such money with the superintendent for the use of the decedent, where the sum involved does not exceed one thousand dollars; or

(4) To the department of social and health services, when there are moneys due and owing from such deceased person's estate for the cost of his care and maintenance at a state institution: *Provided*, That transfer of such money or property may be made to the person first qualifying under this section and such transfer shall exonerate the superintendent from further responsibility relative to such money or property: *And provided further*, That upon satisfactory showing the funeral expenses of such decedent are unpaid, the superintendent may pay up to one thousand dollars from said deceased inmate's funds on said obligation. [1973 1st ex.s. c 76 § 1; 1965 c 145 § 11.08.111. Prior: 1959 c 240 § 1; 1951 c 138 § 2.]

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

11.08.120 Property of deceased inmates of state institutions—Sale—Disposition of proceeds. The property, other than money, of such deceased inmate remaining in the custody of a superintendent of a state institution after the expiration of the above two-year period may be forwarded to the department of corrections at its request and may be appraised and sold at public auction to the highest bidder in the manner and form as provided for public sales of personal property, and all moneys realized upon such sale, after deducting the expenses thereof, shall be paid into the general fund of the state treasury. [1981 c 136 § 59; 1979 c 141 § 11; 1965 c 145 § 11.08.120. Prior: 1951 c 138 § 3; prior: 1923 c 113 § 2; RRS § 1363–2.]

Effective date—1981 c 136: See RCW 72.09.900.

Abandoned inmate personal property: RCW 63.42.030, 63.42.040.

11.08.140 Escheat for want of heirs. Whenever any person dies, whether a resident of this state or not, leaving property subject to the jurisdiction of this state and without being survived by any person entitled to the same under the laws of this state, such property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.280. [1965 c 145 § 11.08.140. Prior: 1955 c 254 § 2.]

11.08.150 Title to property vests in state at death of owner. Title to escheat property, which shall include any intangible personalty, shall vest in the state at the death of the owner thereof. [1965 c 145 § 11.08.150. Prior: 1955 c 254 § 3.]

11.08.160 Jurisdiction, duties, of department of revenue. The department of revenue of this state shall have supervision of and jurisdiction over escheat property and may institute and prosecute any proceedings deemed necessary or proper in the handling of such property, and it shall be the duty of the department of revenue to protect and conserve escheat property for the benefit of the permanent common school fund of the state until such property or the proceeds thereof have been forwarded to the state treasurer or the state land commissioner as hereinafter provided. [1975 1st ex.s. c 278 § 1; 1965 c 145 § 11.08.160. Prior: 1955 c 254 § 4.]

Severability—1975 1st ex.s. c 278: "If any provision of this 1975 amendatory 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." [1975 1st ex.s. c 278 § 215.]

Construction—1975 1st ex.s. c 278: "The legislature hereby reaffirms its singular intent under this amendatory act to change the designation of the state tax commission to the department of revenue or the board of tax appeals, as the case may be, and to make explicit its intent that no rights, duties, obligations or benefits, of whatsoever kind, are to be construed as changed as a result of the enactment hereof." [1975 1st ex.s. c 278 § 217.]

11.08.170 Probate of escheat property—Notice to department of revenue. Escheat property may be probated under the provisions of the probate laws of this state. Whenever such probate proceedings are instituted, whether by special administration or otherwise, the petitioner shall promptly notify the department of revenue in writing thereof on forms furnished by the department of revenue to the county clerks. Thereafter, the department of revenue shall be served with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all interim reports, final accounts or petitions for the determination of heirship. Like notice shall be given of the presentation of any claims to the court for allowance. Failure to furnish such notice shall be deemed jurisdictional and any order of the court entered without such notice shall be void: *Provided*, That the department of revenue may waive the provisions of this section in its discretion. [1975 1st ex.s. c 278 § 2; 1965 c 145 § 11.08.170. Prior: 1955 c 254 § 5.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.180 Department of revenue to be furnished copies of documents and pleadings. The department of revenue may demand copies of any papers, documents or pleadings involving the escheat property or the probate thereof deemed by it to be necessary for the enforcement of RCW 11.08.140 through 11.08.280 and it shall be the duty of the administrator or his attorney to furnish such

copies to the department. [1975 1st ex.s. c 278 § 3; 1965 c 145 § 11.08.180. Prior: 1955 c 254 § 6.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.185 Escheat property—Records of department of revenue—Public record information. All records of the department of revenue relating to escheated property or property about to escheat shall be a public record and shall be made available by the department of revenue for public inspection. Without limitation, the records to be made public shall include all available information regarding possible heirs, descriptions and amounts of property escheated or about to escheat, and any information which might serve to identify the proper heirs. [1973 c 25 § 1.]

11.08.200 Liability for use of escheated property. If any person shall take possession of escheat property without proper authorization to do so, and shall have the use thereof for a period exceeding sixty days, he shall be liable to the state for the reasonable value of such use, payment of which may be enforced by the department of revenue or by the administrator of the estate. [1975 1st ex.s. c 278 § 4; 1965 c 145 § 11.08.200. Prior: 1955 c 254 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.205 Lease, sublease or rental of escheated real property—Authorized—Expenses—Distribution of proceeds. (1) The department of natural resources shall have the authority to lease real property from the administrator of an estate being probated under the escheat provisions, RCW 11.08.140 to 11.08.280.

(2) The department of natural resources shall have the authority to sublease or rent the real property, it has leased under subsection (1) of this section, during the period that the real property is under the authority of the court appointed administrator.

(3) Any moneys gained by the department of natural resources from leases or rentals shall be credited to an escheat reserve account bearing the name of the estate.

(4) The department of natural resources shall have the authority to expend moneys to preserve and maintain the real property during the probate period.

(5) Any expenses by the department of natural resources in preserving or maintaining the real property may be paid as follows:

(a) First, the expenses shall be charged to the escheat reserve account bearing the name of the estate; and

(b) Second, if the expenses exceed the escheat reserve account, then the expenses shall be paid as follows:

(i) If the land is distributed to the state by the administrator, the expenses shall be paid out of the sale price of the land as later sold by the department of natural resources, or shall be paid out of the general fund if the land is held for use by the state; or

(ii) If the land is distributed to the heirs by the administrator, the expenses shall be borne by the estate.

(6) Upon the final distribution of the real property, the escheat reserve account shall be closed out as follows:

(a) If the real property is distributed to the state, the balance of the account shall be paid into the permanent common school fund of the state; or

(b) If the real property is distributed to the heirs, the balance of the account shall be paid to the estate. [1969 ex.s. c 249 § 1.]

11.08.210 Allowance of claims, etc.—Sale of property—Decree of distribution. If at the expiration of four months from the date of the first publication of notice to creditors no heirs have appeared and established their claim to the estate, the court may enter an interim order allowing claims, expenses, and partial fees. If at the expiration of ten months from the date of issuance of letters testamentary or of administration no heirs have appeared and established their claim to the estate, all personal property not in the form of cash shall be sold under order of the court. Personal property found by the court to be worthless shall be ordered abandoned. Real property shall not be sold for the satisfaction of liens thereon, or for the payment of the debts of decedent or expenses of administration until the proceeds of the personal property are first exhausted. The court shall then enter a decree allowing any additional fees and charges deemed proper and distributing the balance of the cash on hand, together with any real property, to the state. Remittance of cash on hand shall be made to the department of revenue which shall make proper records thereof and forthwith forward such funds to the state treasurer for deposit in the permanent common school fund of the state. [1979 ex.s. c 209 § 19; 1975 1st ex.s. c 278 § 5; 1965 c 145 § 11.08.210. Prior: 1955 c 254 § 9.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.220 Certified copies of decree—Duties of commissioner of public lands. The department of revenue shall be furnished two certified copies of the decree of the court distributing any real property to the state, one of which shall be forwarded to the state land commissioner who shall thereupon assume supervision of and jurisdiction over such real property and thereafter handle it the same as state common school lands. The administrator shall also file a certified copy of the decree with the auditor of any county in which the escheated real property is situated. [1975 1st ex.s. c 278 § 6; 1965 c 145 § 11.08.220. Prior: 1957 c 125 § 1; 1955 c 254 § 10.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Management of acquired lands by state land commissioner: RCW 79.01.612.

11.08.230 Appearance and claim of heirs—Notices to department of revenue. Upon the appearance of heirs and the establishment of their claim to the satisfaction

of the court prior to entry of the decree of distribution to the estate, the provisions of RCW 11.08.140 through 11.08.280 shall not further apply, except for purposes of appeal: *Provided*, That the department of revenue shall be promptly given written notice of such appearance by the claimants and furnished copies of all papers or documents on which such claim of heirship is based. Any documents in a foreign language shall be accompanied by translations made by a properly qualified translator, certified by him to be true and correct translations of the original documents. The administrator or his attorney shall also furnish the department of revenue with any other available information bearing on the validity of the claim. [1975 1st ex.s. c 278 § 7; 1965 c 145 § 11.08.230. Prior: 1955 c 254 § 11.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.240 Limitation on filing claim. Any claimant to escheated funds or real property shall have seven years from the date of issuance of letters testamentary or of administration within which to file his claim. Such claim shall be filed with the court having original jurisdiction of the estate, and a copy thereof served upon the department of revenue, together with twenty days notice of the hearing thereon. [1975 1st ex.s. c 278 § 8; 1965 c 145 § 11.08.240. Prior: 1955 c 254 § 12.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.250 Order of court on establishment of claim. Upon establishment of the claim to the satisfaction of the court, it shall order payment to the claimant of any escheated funds and delivery of any escheated land, or the proceeds thereof, if sold. [1965 c 145 § 11.08.250. Prior: 1955 c 254 § 13.]

11.08.260 Payment of escheated funds to claimant. In the event the order of the court requires the payment of escheated funds or the proceeds of the sale of escheated real property, a certified copy of such order shall be served upon the department of revenue which shall thereupon take any steps necessary to effect payment to the claimant out of the general fund of the state. [1975 1st ex.s. c 278 § 9; 1965 c 145 § 11.08.260. Prior: 1955 c 254 § 14.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.08.270 Conveyance of escheated property to claimant. In the event the order of the court requires the delivery of real property to the claimant, a certified copy of such order shall be served upon the state land commissioner who shall thereupon make proper certification to the office of the governor for issuance of a quit claim deed for the property to the claimant. [1965 c 145 § 11.08.270. Prior: 1955 c 254 § 15.]

11.08.280 Limitation when claimant is minor or incompetent not under guardianship. The claims of any persons to escheated funds or real property which are

not filed within seven years as specified above are forever barred, excepting as to those persons who are minors or who are legally incompetent and not under guardianship, in which event the claim may be filed within seven years after their disability is removed. [1965 c 145 § 11.08.280. Prior: 1955 c 254 § 16.]

11.08.290 Deposit of cash received by personal representative of escheat estate. All cash received by the personal representative of an escheat estate shall be immediately deposited at interest for the benefit of the estate in a federally insured time or savings deposit or share account, except that the personal representative may maintain an amount not to exceed two hundred fifty dollars in a checking account. This arrangement may be changed by appropriate court order. [1979 ex.s. c 209 § 18.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

Chapter 11.12 WILLS

Sections

11.12.010	Who may make a will.
11.12.020	Requisites of wills—Foreign wills.
11.12.025	Nuncupative wills.
11.12.030	Signature of testator at his direction—Signature by mark.
11.12.040	Revocation of will, how effected.
11.12.050	Subsequent marriage of testator—Divorce.
11.12.060	Agreement to convey does not revoke.
11.12.070	Devise or bequeathal of property subject to encumbrance.
11.12.080	No revival of will by revocation of later one.
11.12.090	Intestacy as to pretermitted children.
11.12.110	Death of devisee or legatee before testator.
11.12.120	Lapsed legacy or devise—Procedure and proof.
11.12.130	Procedure where legatee or devisee is an absentee.
11.12.140	Order of court declaring lapse.
11.12.150	Petition and notice where legatee or devisee unknown.
11.12.160	Witness as devisee or legatee—Effect of, on will.
11.12.170	Devise of land, what passes.
11.12.180	Estates for life—Remainders.
11.12.190	Will to operate on after-acquired property.
11.12.200	Contribution among devisees and legatees.
11.12.210	Enforcement of contribution.
11.12.220	No interest on devise unless will so provides.
11.12.230	Intent of testator controlling.
11.12.250	Gifts to trusts.
11.12.255	Incorporation by reference.
11.12.260	Separate writing may direct disposition of tangible personal property—Requirements.

Inheritance rights of slayers: Chapter 11.84 RCW.

Probate records, replacement when lost or destroyed: RCW 5.48.060.

Trust company advertising will preparation, penalty: RCW 30.04.260.

11.12.010 Who may make a will. Any person of sound mind who has attained the age of eighteen years may, by last will, devise all his or her estate, both real and personal.

All wills executed subsequent to September 16, 1940, and which meet the requirements of this section are hereby validated and shall have all the force and effect of wills executed subsequent to the taking effect of this section. [1970 ex.s. c 17 § 3; 1965 c 145 § 11.12.010.

Prior: 1943 c 193 § 1; 1917 c 156 § 24; Rem. Supp. 1943 § 1394; prior: Code 1881 § 1318; 1863 p 207 § 51; 1860 p 169 § 18.]

11.12.020 Requisites of wills—Foreign wills. Every will shall be in writing signed by the testator or by some other person under his direction in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator by his direction or request: *Provided*, That a last will and testament, executed without the state, in the mode prescribed by law, either of the place where executed or of the testator's domicile shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state. [1965 c 145 § 11.12.020. Prior: 1929 c 21 § 1; 1917 c 156 § 25; RRS § 1395; prior: Code 1881 § 1319; 1863 p 207 §§ 53, 54; 1860 p 170 §§ 20, 21. FORMER PART OF SECTION; re nuncupative wills, now codified as RCW 11.12.025.]

11.12.025 Nuncupative wills. Nothing contained in this chapter shall prevent any member of the armed forces of the United States or person employed on a vessel of the United States merchant marine from disposing of his wages or personal property, or prevent any person competent to make a will from disposing of his or her personal property of the value of not to exceed one thousand dollars, by nuncupative will if the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and that such nuncupative will was made at the time of the last sickness of the testator, but no proof of any nuncupative will shall be received unless it be offered within six months after the speaking of the testamentary words, nor unless the words or the substance thereof be first committed to writing, and in all cases a citation be issued to the widow and/or heirs at law of the deceased that they may contest the will, and no real estate shall be devised by a nuncupative will. [1965 c 145 § 11.12.025. Formerly RCW 11.12.020, part.]

11.12.030 Signature of testator at his direction—Signature by mark. Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name to such will and state that he subscribed the testator's name at his request: *Provided*, That such signing and statement shall not be required if the testator shall evidence the approval of the signature so made at his request by making his mark on the will. [1965 c 145 § 11.12.030. Prior: 1927 c 91 § 1; 1917 c 156 § 27; RRS § 1397; prior: Code 1881 § 1320; 1863 p 207 § 54; 1860 p 170 § 21.]

11.12.040 Revocation of will, how effected. A will, or any part thereof, can be revoked

(1) By a written will; or

(2) By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking

the same, by the testator himself or by another person in his presence and by his direction. If such act is done by any person other than the testator, the direction of the testator and the facts of such injury or destruction must be proved by two witnesses. [1965 c 145 § 11.12.040. Prior: 1917 c 156 § 28; RRS § 1398; prior: Code 1881 § 1321; 1863 p 207 § 55; 1860 p 170 § 22.]

11.12.050 Subsequent marriage of testator—Divorce. If, after making any will, the testator shall marry and the spouse shall be living at the time of the death of the testator, such will shall be deemed revoked as to such spouse, unless provision shall have been made for such survivor by marriage settlement, or unless such survivor be provided for in the will or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received. A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse. [1965 c 145 § 11.12.050. Prior: 1917 c 156 § 29; RRS § 1399; prior: Code 1881 § 1322; 1863 p 207 § 56; 1860 p 170 § 23.]

11.12.060 Agreement to convey does not revoke. A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his next of kin, if the same had descended to him. [1965 c 145 § 11.12.060. Prior: 1917 c 156 § 30; RRS § 1400; prior: Code 1881 § 1323; 1863 p 208 § 58; 1860 p 170 § 25.]

11.12.070 Devise or bequeathal of property subject to encumbrance. When any real or personal property subject to a mortgage is specifically devised, the devisee shall take such property so devised subject to such mortgage unless the will provides that such mortgage be otherwise paid. The term "mortgage" as used in this section shall not include a pledge of personal property.

A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or encumbrance. [1965 c 145 § 11.12.070. Prior: 1955 c 205 § 2; 1917 c 156 § 31; RRS § 1401; prior: Code 1881 § 1324; 1860 p 170 § 26.]

11.12.080 No revival of will by revocation of later one. If, after making any will, the testator shall duly make and execute a second will, the destruction, cancellation, or revocation of such second will shall not revive the first will. [1965 c 145 § 11.12.080. Prior: 1917 c 156 § 35; RRS § 1405; prior: Code 1881 § 1328; 1863 p 208 § 63; 1860 p 171 § 30.]

11.12.090 Intestacy as to pretermitted children. If any person make his last will and die leaving a child or children or descendants of such child or children not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, as to such child or children not named or provided for, shall be deemed to die intestate, and such child or children or their descendants shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs, devisees and legatees shall refund their proportional part. [1965 c 145 § 11.12.090. Prior: 1917 c 156 § 32; RRS § 1402; prior: Code 1881 § 1325; 1863 p 208 § 60; 1860 p 170 § 27.]

11.12.110 Death of devisee or legatee before testator. When any estate shall be devised or bequeathed to any child, grandchild, or other relative of the testator, and such devisee or legatee shall die before the testator, having lineal descendants who survive the testator, such descendants shall take the estate, real and personal, as such devisee or legatee would have done in the case he had survived the testator; if such descendants are all in the same degree of kinship to the predeceased devisee or legatee they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such predeceased devisee or legatee. A spouse is not a relative under the provisions of this section. [1965 c 145 § 11.12.110. Prior: 1947 c 44 § 1; 1917 c 156 § 34; Rem. Supp. 1947 § 1404; prior: Code 1881 § 1327; 1863 p 208 § 62; 1860 p 171 § 29.]

11.12.120 Lapsed legacy or devise—Procedure and proof. Whenever any person having died leaving a will which has been admitted to probate or established by an adjudication of testacy, shall by said will have given, devised or bequeathed unto any person, a legacy or a devise upon the condition that said person survive him, and not otherwise, such legacy or devise shall lapse and fall into the residue of said estate to be distributed according to the residuary clause, if there be one, of said will, and if there be none then according to the laws of descent, unless said legatee or devisee, as the case may be, or his heirs, personal representative, or someone in behalf of such legatee or devisee, shall appear before the court which is administering said estate within three years from and after the date the said will was admitted to probate or established by an adjudication of testacy, and prove to the satisfaction of the court that the said legatee or devisee, as the case may be, did in fact survive the testator. [1974 ex.s. c 117 § 51; 1965 c 145 § 11.12.120. Prior: 1937 c 151 § 1; RRS § 1404-1.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.12.130 Procedure where legatee or devisee is an absentee. If it shall be made to appear to the satisfaction of said court within the time fixed by RCW 11.12.120 that such legatee or devisee, as the case may be, did in

fact survive the testator, but that such legatee, or devisee, is an absentee within the meaning of chapter 11.80 RCW, then and in that event the court shall by appropriate order direct the said legacy or devise to be distributed to a trustee appointed and qualified as provided for in said chapter 11.80 RCW. [1965 c 145 § 11.12.130. Prior: 1937 c 151 § 2; RRS § 1404–2.]

11.12.140 Order of court declaring lapse. The personal representative, residuary legatee, or any heir at law of any such estate, may by sworn petition call the attention of the court to the fact that the periods of time set forth in RCW 11.12.120 have elapsed, and that such legatee or devisee, his heirs, personal representative, or anyone in his behalf, has not appeared and proved to the satisfaction of the court that such legatee or devisee survived the testator, and if it appear from the records of the proceedings in said estate that the allegations of the petition are true, it shall be the duty of the court to enter an appropriate order declaring such legacy or devise to have lapsed, and directing its disposition as provided for in RCW 11.12.120. [1965 c 145 § 11.12.140. Prior: 1937 c 151 § 3; RRS § 1404–3.]

11.12.150 Petition and notice where legatee or devisee unknown. Every personal representative of such an estate shall, within two years after the said will has been admitted to probate, file in said probate proceedings a sworn petition which shall set out in detail the name and last known address of any such legatee or devisee, the circumstances of his departure from that address, if known; his occupation or business, if known; the fact that the personal representative has been unable to locate him or to ascertain whether or not he survived the testator; and all other facts within the knowledge of the personal representative, which may aid the court in determining the best and most advantageous method to employ in attempting to locate said legatee or devisee. Upon such a petition being filed it shall be the duty of the court, and the court shall have the power, to call before it the personal representative and such witnesses as may be necessary, and examine them under oath as to the truth of the allegations in said petition. After the hearing the court may direct such notice to be given as it shall think will most likely come to the attention of said legatee or devisee, or persons who might know him. Such notice shall be given for such a length of time and in such places as the court may order, and shall set forth the fact that a legacy or devise, as the case may be, awaits the person therein named, and shall call upon all persons having any knowledge concerning the said person or his whereabouts to notify the court of all the facts within their knowledge concerning said person, within a time therein stated. [1965 c 145 § 11.12.150. Prior: 1937 c 151 § 4; RRS § 1404–4.]

11.12.160 Witness as devisee or legatee—Effect of, on will. All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on

the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him. [1965 c 145 § 11.12.160. Prior: 1917 c 156 § 38; RRS § 1408; prior: Code 1881 § 1331; 1863 p 209 § 67; 1860 p 171 § 34.]

11.12.170 Devise of land, what passes. Every devise of land in any will shall be construed to convey all the estate of the deviser therein which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate. [1965 c 145 § 11.12.170. Prior: 1917 c 156 § 39; RRS § 1409; prior: Code 1881 § 1332; 1863 p 209 § 69; 1860 p 172 § 36.]

11.12.180 Estates for life—Remainders. If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator. [1965 c 145 § 11.12.180. Prior: 1917 c 156 § 40; RRS § 1410; prior: Code 1881 § 1333; 1863 p 210 § 70; 1860 p 172 § 37.]

11.12.190 Will to operate on after-acquired property. Any estate, right or interest in property acquired by the testator after the making of his will may pass thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. [1965 c 145 § 11.12.190. Prior: 1917 c 156 § 41; RRS § 1411; prior: Code 1881 § 1334; 1863 p 210 § 71; 1860 p 172 § 38.]

11.12.200 Contribution among devisees and legatees. When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken. [1965 c 145 § 11.12.200. Prior: 1917 c 156 § 42; RRS § 1412; prior: Code 1881 § 1335; 1863 p 210 § 72; 1860 p 172 § 39.]

11.12.210 Enforcement of contribution. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made and enforce such order. [1965 c 145 § 11.12.210. Prior: 1917 c 156 § 43;

RRS § 1413; prior: Code 1881 § 1336; 1863 p 210 § 73; 1860 p 172 § 40.]

11.12.220 No interest on devise unless will so provides. No interest shall be allowed or calculated on any devise contained in any will unless such will expressly provides for such interest. [1965 c 145 § 11.12.220. Prior: 1917 c 156 § 26; RRS § 1396.]

11.12.230 Intent of testator controlling. All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them. [1965 c 145 § 11.12.230. Prior: 1917 c 156 § 45; RRS § 1415; prior: Code 1881 § 1338; 1863 p 210 § 75; 1860 p 172 § 42.]

11.12.250 Gifts to trusts. A gift may be made by a will to a trustee of a trust executed by any trustor or testator (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if (1) the trust is identified in the testator's will and (2) its terms are evidenced either (a) in a written instrument other than a will, executed by the trustor prior to or concurrently with the execution of the testator's will or (b) in the will of a person who has predeceased the testator, regardless of when executed. The existence, size, or character of the corpus of the trust is immaterial to the validity of the gift. Such gift shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the testator's will or after the testator's death. Unless the will provides otherwise, the property so given shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given to be administered and disposed of in accordance with the terms of the instrument establishing the trust, including any amendments, made prior to the death of the testator, and regardless of whether made before or after the execution of the will. Unless the will provides otherwise, an express revocation of the trust prior to the testator's death invalidates the gift. Any termination of the trust other than by express revocation does not invalidate the gift. For purposes of this section, the term "gift" includes the exercise of any testamentary power of appointment. [1985 c 23 § 2. Prior: 1984 c 149 § 5; 1965 c 145 § 11.12.250; prior: 1959 c 116 § 1.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—1985 c 23: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 23 § 1.]

Application—1985 c 23: "This act shall apply to wills of decedents dying after December 31, 1984." [1985 c 23 § 5.]

Severability—1985 c 23: "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." [1985 c 23 § 6.]

Reviser's note: 1985 c 23 reenacted RCW 11.12.250 through 11.12.260 without amendment.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Trusts—Rule against perpetuities: Chapter 11.98 RCW.

11.12.255 Incorporation by reference. A will may incorporate by reference any writing in existence when the will is executed if the will itself manifests the testator's intent to incorporate the writing and describes the writing sufficiently to permit its identification. In the case of any inconsistency between the writing and the will, the will controls. [1985 c 23 § 3. Prior: 1984 c 149 § 6.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.12.260 Separate writing may direct disposition of tangible personal property—Requirements. (1) A will may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will and need not have significance apart from its effect upon the dispositions of property made by the will. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will itself, except that if any person designated to receive property in the writing dies before the testator, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and RCW 11.12.110 shall not apply to such lapse.

(3) The testator may make subsequent handwritten or signed changes to any writing. If there is an inconsistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities. [1985 c 23 § 4. Prior: 1984 c 149 § 7.]

Short title—Application—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Application—Severability—1985 c 23: See notes following RCW 11.12.250.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.16

JURISDICTION—VENUE—NOTICES

Sections

- 11.16.060 Property of nonresident in more than one county—Jurisdiction.
 11.16.070 Proceedings had in county where letters granted.
 11.16.082 Proof of service.
 11.16.083 Waiver of notice.
 11.16.120 Books of record to be kept by county clerk.

Superior court clerk, fees: RCW 36.18.020.

Unknown heirs, pleading, service, etc.: RCW 4.28.140 through 4.28.160: Rules of court: CR 10(a).

Venue in probate and trust proceedings: RCW 11.96.050.

11.16.060 Property of nonresident in more than one county—Jurisdiction. When the estate of the deceased is in more than one county, he not having been a resident of the state at the time of his death, the superior court of that county in which the application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate. [1965 c 145 § 11.16.060. Prior: 1917 c 156 § 7; RRS § 1377; prior: Code 1881 § 1341; 1863 p 211 § 77; 1860 p 173 § 44.]

11.16.070 Proceedings had in county where letters granted. All orders, settlements, trials and other proceedings, under this title shall be had or made in the county in which letters testamentary or of administration were granted. [1965 c 145 § 11.16.070. Prior: 1917 c 156 § 8; RRS § 1378; prior: 1891 p 381 § 5; Code 1881 § 1314; 1863 p 206 § 47.]

11.16.082 Proof of service. Proof of service in all cases requiring notice, whether by publication, mailing or otherwise, shall be filed in the cause. [1965 c 145 § 11.16.082.]

11.16.083 Waiver of notice. Notwithstanding any other provision of this title, no notice of any hearing in probate or probate proceeding need be given to any legally competent person who is interested in any hearing in any probate as an heir, legatee, or devisee of the decedent who has in person or by attorney waived in writing notice of such hearing or proceeding. Such waiver of notice may apply to either a specific hearing or proceeding, or to any and all hearings and proceedings to be held during the administration of the estate in which event such waiver of notice shall be of continuing effect unless subsequently revoked by the filing of a written notice of revocation of the waiver and the mailing of a copy thereof to the personal representative and his attorney. Unless notice of a hearing is required to be given by publication, if all persons entitled to notice thereof shall have waived such notice, the court may hear the matter forthwith. A guardian of the estate or a guardian ad litem may make such waivers on behalf of his incompetent, and a trustee may make such waivers on behalf of any competent or incompetent beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by

law on behalf of any person residing in a foreign country, may make such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof. [1977 ex.s. c 234 § 1; 1965 c 145 § 11.16.083.]

Severability—1977 ex.s. c 234: "If any provisions of this 1977 amendatory 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." [1977 ex.s. c 234 § 30.]

Effective date—Application—1977 ex.s. c 234: "This 1977 amendatory act shall take effect on October 1, 1977 and shall apply to all proceedings in probate with respect to decedents whose deaths occurred after the effective date." [1977 ex.s. c 234 § 31.]

Appointment of guardian, waiver of notice of hearing: RCW 11.88.040.

Award in lieu of homestead—Notice of hearing: RCW 11.52.014.

Borrowing on general credit of estate—Petition—Notice—Hearing: RCW 11.56.280.

Citations in contest of will: RCW 11.24.020.

Notice

of appointment as special representative: RCW 11.28.237.

to creditors when personal representative resigns, dies, or is removed: RCW 11.40.150.

to department of revenue of appointment as personal representative: RCW 82.32.240.

Report of personal representative, notice of hearing: RCW 11.76.020, 11.76.040.

Request for special notice of proceedings in probate: RCW 11.28.240.

Surviving spouse, waiver of notice of hearing on petition for letters: RCW 11.28.131.

11.16.120 Books of record to be kept by county clerk. See RCW 36.23.030.

Chapter 11.20

CUSTODY, PROOF AND PROBATE OF WILLS

Sections

- 11.20.010 Duty of custodian of will—Liability.
 11.20.020 Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses.
 11.20.030 Commission to take testimony of witness.
 11.20.040 Proof where one or more witnesses are unable or incompetent to testify, or absent from state.
 11.20.050 Recording of wills.
 11.20.060 Record of will as evidence.
 11.20.070 Proof of lost or destroyed will.
 11.20.080 Restraint of personal representative during pendency of application to prove lost or destroyed will.
 11.20.090 Admission to probate of foreign will.
 11.20.100 Laws applicable to foreign wills.

11.20.010 Duty of custodian of will—Liability. Any person having the custody or control of any will shall, within thirty days after he shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his custody or control any will shall within forty days after he received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall wilfully violate any of the provisions of this section shall be liable to any party aggrieved for the

damages which may be sustained by such violation. [1965 c 145 § 11.20.010. Prior: 1917 c 156 § 9; RRS § 1379; prior: Code 1881 §§ 1342, 1343; 1863 p 212 § 78; 1860 p 174 § 45.]

Refusal to serve as executor: RCW 11.28.010.

11.20.020 Application for probate—Hearing—Order—Proof—Record of testimony—Affidavits of attesting witnesses. (1) Applications for the probate of a will and for letters testamentary, or either, may be made to the judge of the court having jurisdiction and the court may immediately hear the proofs and either probate or reject such will as the testimony may justify. Upon such hearing the court shall make and cause to be entered a formal order, either establishing and probating such will, or refusing to establish and probate the same, and such order shall be conclusive except in the event of a contest of such will as hereinafter provided. All testimony in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. If the application for probate of a will does not request the appointment of a personal representative and the court enters an adjudication of testacy establishing such will no further administration shall be required except as commenced pursuant to RCW 11.28.330 or 11.28.340.

(2) In addition to the foregoing procedure for the proof of wills, any or all of the attesting witnesses to a will may, at the request of the testator or, after his decease, at the request of the executor or any person interested under it, make an affidavit before any person authorized to administer oaths, stating such facts as they would be required to testify to in court to prove such will, which affidavit may be written on the will or may be attached to the will or to a photographic copy of the will. The sworn statement of any witness so taken shall be accepted by the court as if it had been taken before the court. [1977 ex.s. c 234 § 2; 1974 ex.s. c 117 § 27; 1969 ex.s. c 126 § 1; 1965 c 145 § 11.20.020. Prior: 1917 c 156 § 10; RRS § 1380; prior: 1863 p 212 §§ 85, 86; 1860 p 175 §§ 52, 53.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Will contests: Chapter 11.24 RCW.

11.20.030 Commission to take testimony of witness. If any witness be prevented by sickness from attending at the time any will is produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission annexed to such will, and directed to any judge, notary public, or other person authorized to administer an oath, empowering him or her to take and certify the attestation of such witness. [1987 c 202 § 171; 1965 c 145 § 11.20.030. Prior: 1923 c 142 § 1; 1917 c 156 § 11; RRS § 1381; prior: Code 1881 § 1351; 1863 p 212 § 87; 1860 p 175 § 54.]

Intent—1987 c 202: See note following RCW 2.04.190.

11.20.040 Proof where one or more witnesses are unable or incompetent to testify, or absent from state. The subsequent incompetency from whatever cause of one or more of the subscribing witnesses, or their inability to testify in open court or pursuant to commission, or their absence from the state, shall not prevent the probate of the will. In such cases the court shall admit the will to probate upon satisfactory testimony that the handwriting of the testator and of an incompetent or absent subscribing witness is genuine or the court may consider such other facts and circumstances, if any, as would tend to prove such will. [1967 c 168 § 5; 1965 c 145 § 11.20.040. Prior: 1945 c 39 § 1; 1943 c 219 § 1; 1917 c 156 § 12; Rem. Supp. 1945 § 1382; prior: Code 1881 § 1353; 1863 p 213 §§ 89, 90; 1860 p 175 §§ 56, 57.]

11.20.050 Recording of wills. All wills shall be recorded by the clerk after filing, but may be withdrawn on the order of the court. [1967 c 168 § 17; 1965 c 145 § 11.20.050. Prior: 1915 c 156 § 13; RRS § 1383; prior: Code 1881 § 1356; 1863 p 213 § 92; 1860 p 175 § 59.]

Clerk to keep record of wills: RCW 36.23.030(7).

11.20.060 Record of will as evidence. The record of any will made, probated and recorded as herein provided, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven. [1965 c 145 § 11.20.060. Prior: 1917 c 156 § 14; RRS § 1384; prior: 1891 p 382 § 7; Code 1881 § 1358; 1863 p 213 § 94; 1860 p 175 § 61.]

Certified copies of recorded instruments as evidence: RCW 5.44.060.

11.20.070 Proof of lost or destroyed will. Whenever any will is lost or destroyed, the court may take proof of the execution and validity of such will and establish it, notice to all persons interested having been first given. Such proof shall be reduced to writing and signed by the witnesses and filed with the clerk of the court.

No will shall be allowed to be proved as a lost or destroyed will unless it is proved to have been in existence at the time of the death of the testator, or is shown to have been destroyed, canceled or mutilated in whole or in part as a result of actual or constructive fraud or in the course of an attempt to change the will in whole or in part, which attempt has failed, or as the result of a mistake of fact, nor unless its provisions are clearly and distinctly proved by at least two witnesses, and when any such will is so established, the provisions thereof shall be distinctly stated in the judgment establishing it, and such judgment shall be recorded as wills are required to be recorded. Executors of such will or administrators with the will annexed may be appointed by the court in the same manner as is herein provided with reference to original wills presented to the court for probate. [1965 c 145 § 11.20.070. Prior: 1955 c 205 § 1; 1917 c 156 § 20; RRS § 1390; prior: Code 1881 § 1367; 1860 p 177 § 70.]

Replacement of lost or destroyed probate records: RCW 5.48.060.

11.20.080 Restraint of personal representative during pendency of application to prove lost or destroyed will. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration shall have been granted on the estate of the testator, or letters testamentary of any previous will of the testator shall have been granted, the court shall have authority to restrain the personal representatives so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will. [1965 c 145 § 11.20.080. Prior: 1917 c 156 § 21; RRS § 1391; prior: Code 1881 § 1369; 1863 p 215 § 105; 1860 p 177 § 72.]

Replacement of lost or destroyed probate records: RCW 5.48.060.

11.20.090 Admission to probate of foreign will. Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, certified by the attestation of the clerk of the court in which such probate was made; or if there be no clerk, certification by the attestation of the judge thereof, and by the seal of such officers, if they have a seal. [1977 ex.s. c 234 § 3; 1965 c 145 § 11.20.090. Prior: 1917 c 156 § 22; RRS § 1392; prior: Code 1881 § 1370; 1877 p 284 § 1.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.20.100 Laws applicable to foreign wills. All provisions of law relating to the carrying into effect of domestic wills after probate thereof shall, so far as applicable, apply to foreign wills admitted to probate in this state. [1965 c 145 § 11.20.100. Prior: 1917 c 156 § 23; RRS § 1393; prior: Code 1881 § 1371; 1877 p 284 § 2.]

Chapter 11.24 WILL CONTESTS

Sections

11.24.010	Contest of admission or rejection—Limitation of action—Issues.
11.24.020	Citations on contest.
11.24.030	Burden of proof.
11.24.040	Revocation of probate.
11.24.050	Costs.

11.24.010 Contest of admission or rejection—Limitation of action—Issues. If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to

make a last will and testament, or respecting the execution by a deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will.

If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding and final. [1971 c 7 § 1; 1967 c 168 § 6; 1965 c 145 § 11.24.010. Prior: 1917 c 156 § 15; RRS § 1385; prior: 1891 p 382 § 8; Code 1881 § 1360; 1863 p 213 § 96; 1860 p 176 § 63.]

11.24.020 Citations on contest. Upon the filing of the petition referred to in RCW 11.24.010, a citation shall be issued to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the state, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted. [1965 c 145 § 11.24.020. Prior: 1917 c 156 § 16; RRS § 1386; prior: 1891 p 382 § 9; Code 1881 § 1361; 1863 p 214 § 97; 1860 p 176 § 64.]

11.24.030 Burden of proof. In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be prima facie evidence of the legality of such will, if probated, or its illegality, if rejected, and the burden of proving the illegality of such will, if probated, or the legality of such will, if rejected by the court, shall rest upon the person contesting such probate or rejection of the will. [1965 c 145 § 11.24.030. Prior: 1917 c 156 § 17; RRS § 1387.]

11.24.040 Revocation of probate. If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked, and thereupon and thereafter the powers of the executor or administrator with the will annexed shall cease, but such executor or administrator shall not be liable for any act done in good faith previous to such annulling or revoking. [1965 c 145 § 11.24.040. Prior: 1917 c 156 § 18; RRS § 1388; prior: Code 1881 § 1364; 1863 p 214 § 100; 1860 p 177 § 67.]

11.24.050 Costs. If the probate be revoked or the will annulled, assessment of costs shall be in the discretion of the court. If the will be sustained, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney's fees as the court may deem proper. [1965 c 145 § 11.24.050. Prior: 1917 c 156 § 19; RRS § 1389; prior: Code 1881 § 1366; 1860 p 177 § 69.]

Rules of court: SPR 98.12W.

Personal representative

allowance of necessary expenses: RCW 11.48.050.

compensation—Attorney's fee: RCW 11.48.210.

Chapter 11.28

LETTERS TESTAMENTARY AND OF ADMINISTRATION

Sections

- 11.28.010 Letters to executors—Refusal to serve—Disqualification.
- 11.28.020 Objections to appointment.
- 11.28.030 Community property—Who entitled to letters—Waiver.
- 11.28.040 Procedure during minority or absence of executor.
- 11.28.050 Powers of remaining executors on removal of associate.
- 11.28.060 Administration with will annexed on death of executor.
- 11.28.070 Authority of administrator with will annexed.
- 11.28.085 Records and certification of letters—Record of bonds.
- 11.28.090 Execution and form of letters testamentary.
- 11.28.100 Form of letters with will annexed.
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- 11.28.280 Administrator de bonis non.
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- 11.28.330 Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing.
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Administration of deceased incompetent's estate: RCW 11.88.150.

Letters after final settlement: RCW 11.76.250.

Replacement of lost or destroyed probate records: RCW 5.48.060.

Trust company may not solicit appointment as personal representative: RCW 30.04.260.

11.28.010 Letters to executors—Refusal to serve—Disqualification. After the entry of an order admitting a will to probate and appointing a personal representative, or personal representatives, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus

appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will. [1974 ex.s. c 117 § 28; 1965 c 145 § 11.28.010. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.020 Objections to appointment. Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court. [1965 c 145 § 11.28.020. Prior: 1917 c 156 § 47; RRS § 1417; prior: Code 1881 § 1372; 1863 p 217 § 106; 1860 p 179 § 73.]

11.28.030 Community property—Who entitled to letters—Waiver. A surviving spouse shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse to be otherwise qualified; but if such surviving spouse do not make application for such appointment within forty days immediately following the death of the deceased spouse, he or she shall be considered as having waived his or her right to administer upon such community property. If any person, other than the surviving spouse, make application for letters testamentary on such property, prior to the expiration of such forty days, then the court, before making any such appointment, shall require notice of such application to be given the said surviving spouse, for such time and in such manner as the court may determine, unless such applicant show to the satisfaction of the court that there is no surviving spouse or that he or she has in writing waived the right to administer upon such community property. [1965 c 145 § 11.28.030. Prior: 1917 c 156 § 49; RRS § 1419.]

11.28.040 Procedure during minority or absence of executor. If the executor be a minor or absent from the state, letters of administration with the will annexed shall be granted, during the time of such minority or absence, to some other person unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, having returned, shall be admitted as joint executor with the former, provided a nonresident of this state may qualify as provided in RCW 11.36.010. [1965 c 145 § 11.28.040. Prior: 1917 c 156 § 50; RRS § 1420; prior: Code 1881 § 1374; 1863 p 217 § 108; 1860 p 180 § 75.]

11.28.050 Powers of remaining executors on removal of associate. When any of the executors named shall not qualify or having qualified shall become disqualified or be removed, the remaining executor or executors shall have the authority to perform every act and discharge

every trust required by the will, and their acts shall be effectual for every purpose. [1965 c 145 § 11.28.050. Prior: 1917 c 156 § 54; RRS § 1424; prior: Code 1881 § 1372; 1854 p 268 § 5.]

11.28.060 Administration with will annexed on death of executor. No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, on the estate of the first testator left unadministered, shall be issued. [1965 c 145 § 11.28.060. Prior: 1917 c 156 § 53; RRS § 1423; prior: Code 1881 § 1379; 1863 p 218 § 113; 1860 p 180 § 80.]

Executor of executor may not sue for estate of first testator: RCW 11.48.190.

11.28.070 Authority of administrator with will annexed. Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose: *Provided*, That they shall not lease, mortgage, pledge, exchange, sell, or convey any real or personal property of the estate except under order of the court and pursuant to procedure under existing laws pertaining to the administration of estates in cases of intestacy, unless the powers expressed in the will are directory and not discretionary, or said administrator with will annexed shall have obtained nonintervention powers as provided in chapter 11.68 RCW. [1974 ex.s. c 117 § 25; 1965 c 145 § 11.28.070. Prior: 1955 c 205 § 3; 1917 c 156 § 55; RRS § 1425; prior: Code 1881 § 1381; 1860 p 180 § 82.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.085 Records and certification of letters—Record of bonds. See RCW 36.23.030.

11.28.090 Execution and form of letters testamentary. Letters testamentary to be issued to executors under the provisions of this chapter shall be signed by the clerk, and issued under the seal of the court, and may be in the following form:

State of Washington, county of _____
 In the superior court of the county of _____
 Whereas, the last will of A B, deceased, was, on the _____ day of _____, A.D., _____, duly exhibited, proven, and recorded in our said superior court; and whereas, it appears in and by said will that C D is appointed executor thereon, and, whereas, said C D has duly qualified, now, therefore, know all men by these presents, that we do hereby authorize the said C D to execute said will according to law.
 Witness my hand and the seal of said court this _____ day of _____, A.D., 19__.

[1965 c 145 § 11.28.090. Prior: (i) 1917 c 156 § 56; RCW 11.28.080; RRS § 1426; prior: Code 1881 § 1382; 1863 p 218 § 116; 1860 p 181 § 83. (ii) 1917 c 156 § 59;

RRS § 1429; prior: Code 1881 § 1386; 1863 p 219 § 120; 1860 p 181 § 87.]

11.28.100 Form of letters with will annexed. Letters of administration with the will annexed shall be in substantially the same form as provided for letters testamentary. [1965 c 145 § 11.28.100. Prior: 1917 c 156 § 60; RRS § 1430; prior: Code 1881 § 1387; 1863 p 219 § 121.]

11.28.110 Application for letters of administration or adjudication of intestacy and heirship. Application for letters of administration, or, application for an adjudication of intestacy and heirship without the issuance of letters of administration shall be made by petition in writing, signed and verified by the applicant or his attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and addresses of the heirs of the deceased and that the deceased died without a will. If the application for an adjudication of intestacy and heirship does not request the appointment of a personal representative and the court enters an adjudication of intestacy no further administration shall be required except as set forth in RCW 11.28.330 or 11.28.340. [1977 ex.s. c 234 § 4; 1974 ex.s. c 117 § 29; 1965 c 145 § 11.28.110. Prior: 1917 c 156 § 62; RRS § 1432; prior: Code 1881 § 1389; 1863 p 220 § 123; 1860 p 182 § 90.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.120 Persons entitled to letters. Administration of the estate of the person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(1) The surviving husband or wife, or such person as he or she may request to have appointed.

(2) The next of kin in the following order: (a) child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.

(3) The director of revenue, or the director's designee, for those estates having property subject to the provisions of chapter 11.08 RCW; however, the director may waive this right.

(4) One or more of the principal creditors.

(5) If the persons so entitled shall fail for more than forty days after the death of the intestate to present a petition for letters of administration, or if it appear to the satisfaction of the court that there are no relatives or next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint any suitable person to administer such estate. [1985 c 133 § 1; 1965 c 145 § 11.28.120. Prior: 1927 c 76 § 1; 1917 c 156 § 61; RRS § 1431; prior: Code 1881 § 1388; 1863 p 219 § 122; 1860 p 181 § 89.]

11.28.131 Hearing on petition—Appointment—Issuance of letters—Notice to surviving spouse. When a petition for general letters of administration or for letters of administration with the will annexed shall be filed, the matter may [be] heard forthwith, appointment made and letters of administration issued: *Provided*, That if there be a surviving spouse and a petition is presented by anyone other than the surviving spouse, or any person designated by the surviving spouse to serve as personal representative on his or her behalf, notice to the surviving spouse shall be given of the time and place of such hearing at least ten days before the hearing, unless the surviving spouse shall waive notice of the hearing in writing filed in the cause. [1974 ex.s. c 117 § 44.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.140 Form of letters of administration. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

State of Washington, County of -----

Whereas, A.B., late of ----- on or about the ----- day of ----- A.D., ----- died intestate, leaving at the time of his death, property in this state subject to administration: Now, therefore, know all men by these presents, that we do hereby appoint ----- administrator upon said estate, and whereas said administrator has duly qualified, hereby authorize him to administer the same according to law.

Witness my hand and the seal of said court this ----- day of ----- A.D., 19---

[1965 c 145 § 11.28.140. Prior: 1917 c 156 § 65; RRS § 1435; prior: Code 1881 § 1392; 1863 p 220 § 125; 1860 p 182 § 92.]

11.28.150 Revocation of letters by discovery of will. If after letters of administration are granted a will of the deceased be found and probate thereof be granted, the letters shall be revoked and letters testamentary or of administration with the will annexed, shall be granted. [1965 c 145 § 11.28.150. Prior: 1917 c 156 § 51; RRS § 1421; prior: Code 1881 § 1375; 1863 p 218 § 109; 1860 p 180 § 76.]

11.28.160 Cancellation of letters of administration. The court appointing any personal representative shall have authority for any cause deemed sufficient, to cancel and annul such letters and appoint other personal representatives in the place of those removed. [1965 c 145 § 11.28.160. Prior: 1917 c 156 § 52; RRS § 1422.]

Revocation of letters—Causes: RCW 11.28.250.

11.28.170 Oath of personal representative. Before letters testamentary or of administration are issued, each personal representative or an officer of a bank or trust company qualified to act as a personal representative, must take and subscribe an oath, before some person authorized to administer oaths, that the duties of the

trust as personal representative will be performed according to law, which oath must be filed in the cause and recorded. [1965 c 145 § 11.28.170. Prior: 1917 c 156 § 66; RRS § 1436; prior: Code 1881 § 1393; 1877 p 211 § 4; 1873 p 329 § 366.]

11.28.185 Bond or other security of personal representative—When not required—Waiver—Corporate trustee—Additional bond—Reduction—Other security. When the terms of the decedent's will manifest an intent that the personal representative appointed to administer the estate shall not be required to furnish bond or other security, or when the personal representative is the surviving spouse of the decedent and it appears to the court that the entire estate, after provision for expenses and claims of creditors, will be distributable to such spouse, then such personal representative shall not be required to give bond or other security as a condition of appointment. In all cases where a bank or trust company authorized to act as personal representative is appointed as personal representative, no bond shall be required. In all other cases, unless waived by the court, the personal representative shall give such bond or other security, in such amount and with such surety or sureties, as the court may direct.

Every person required to furnish bond must, before receiving letters testamentary or of administration, execute a bond to the state of Washington conditioned that the personal representative shall faithfully execute the duty of the trust according to law.

The court may at any time after appointment of the personal representative require said personal representative to give a bond or additional bond, the same to be conditioned and to be approved as provided in this section; or the court may allow a reduction of the bond upon a proper showing.

In lieu of bond, the court may in its discretion, substitute other security or financial arrangements, such as provided under RCW 11.88.105, or as the court may deem adequate to protect the assets of the estate. [1977 ex.s. c 234 § 5; 1974 ex.s. c 117 § 46.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.190 Examination of sureties—Additional security—Costs. Before the judge approves any bond required under this chapter, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him at a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause notice to be issued to the personal representative, requiring his appearance on the return of the citation, and on its return he may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such

examination he is satisfied that the bond is insufficient he must require sufficient additional security. If the bond and sureties are found by the court to be sufficient, the costs incident to such hearing shall be taxed against the party instituting such hearing. As a part of such costs the sureties appearing shall be allowed such fees and mileage as witnesses are allowed in civil proceedings: *Provided*, That when the citation herein referred to is issued on the motion of the court, no costs shall be imposed. [1965 c 145 § 11.28.190. Prior: 1917 c 156 § 68; RRS § 1438; prior: Code 1881 § 1400; 1877 p 212 § 4; 1863 p 221 § 129; 1860 p 183 § 96.]

Fees and allowances of witnesses: Chapter 2.40 RCW, RCW 5.56.010.

11.28.210 New or additional bond. Any person interested may at any time by verified petition to the court, or otherwise, complain of the sufficiency of any bond or sureties thereon, and the court may upon such petition, or upon its own motion, and with or without hearing upon the matter, require the personal representative to give a new, or additional bond, or bonds, and in all such matters the court may act in its discretion and make such orders and citations as to it may seem right and proper in the premises. [1965 c 145 § 11.28.210. Prior: 1917 c 156 § 70; RRS § 1440; prior: 1891 p 383 § 13 1/2; Code 1881 § 1404; 1877 p 212 § 4; 1863 p 221 § 131; 1860 p 183 § 98.]

11.28.220 Persons disqualified as sureties. No judge of the superior court, no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as surety on any bond required to be taken in any proceeding in probate. [1965 c 145 § 11.28.220. Prior: 1917 c 156 § 71; RRS § 1441; prior: 1891 p 383 § 14; Code 1881 § 1409; 1863 p 221 § 128; 1860 p 183 § 95.]

11.28.230 Bond not void for want of form—Successive recoveries. No bond required under the provisions of this chapter, and intended as such bond, shall be void for want of form, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond the plaintiff may state its legal effect in the same manner as though it were a perfect bond. The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted. [1965 c 145 § 11.28.230. Prior: 1917 c 156 § 73; RRS § 1443; prior: Code 1881 §§ 1412, 1397; 1877 p 211 § 4; 1854 p 219 § 489.]

Bond not to fail for want of form or substance: RCW 19.72.170.

11.28.235 Limitation of action against sureties. All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal. [1965 c 145 § 11.28.235. Prior: 1917 c 156 § 80; RCW 11.28.310; RRS § 1450; prior: 1891 p 385 § 21; Code 1881 § 1431; 1854 p 274 § 42.]

11.28.237 Notice of appointment as personal representative, pendency of probate. Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate whose names and addresses are known to him, and proof of such mailing or service shall be made by affidavit and filed in the cause. [1977 ex.s. c 234 § 6; 1974 ex.s. c 117 § 30; 1969 c 70 § 2; 1965 c 145 § 11.28.237. Prior: 1955 c 205 § 13, part; RCW 11.76.040, part.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.238 Notice of appointment as personal representative—Notice to department of revenue. Duty of personal representative to notify department of revenue of administration; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.28.240 Request for special notice of proceedings in probate. At any time after the issuance of letters testamentary or of administration or certificate of qualification upon the estate of any decedent, any person interested in the estate as an heir, devisee, distributee, legatee or creditor whose claim has been duly served and filed, or the lawyer for the heir, devisee, distributee, legatee, or creditor may serve upon the personal representative or upon the lawyer for the personal representative, and file with the clerk of the court wherein the administration of the estate is pending, a written request stating that the person desires special notice of any or all of the following named matters, steps or proceedings in the administration of the estate, to wit:

- (1) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.
- (2) Petitions for any order of solvency or for nonintervention powers.
- (3) Filing of accounts.
- (4) Filing of petitions for distribution.
- (5) Petitions by the personal representative for family allowances and homesteads.
- (6) The filing of a declaration of completion.
- (7) The filing of the inventory.
- (8) Notice of presentation of personal representative's claim against the estate.
- (9) Petition to continue a going business.
- (10) Petition to borrow upon the general credit of the estate.
- (11) Petition for judicial proceedings under chapter 11.96 RCW.
- (12) Petition to reopen an estate.
- (13) Intent to distribute estate assets, other than distributions in satisfaction of specific bequests or legacies of specific dollar amounts.
- (14) Intent to pay attorney's or personal representative's fees.

The requests shall state the post office address of the heir, devisee, distributee, legatee or creditor, or his or her lawyer, and thereafter a brief notice of the filing of any of the petitions, accounts, declaration, inventory or claim, except petitions for sale of perishable property, or other tangible personal property which will incur expense or loss by keeping, shall be addressed to the heir, devisee, distributee, legatee or creditor, or his or her lawyer, at the post office address stated in the request, and deposited in the United States post office, with pre-paid postage, at least ten days before the hearing of the petition, account or claim or of the proposed distribution or payment of fees; or personal service of the notices may be made on the heir, devisee, distributee, legatee, creditor, or lawyer, not less than five days before the hearing, and the personal service shall have the same effect as deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of the petition, account or claim or of the proposed distribution or payment of fees. If the notice has been regularly given, any distribution or payment of fees and any order or judgment, made in accord therewith is final and conclusive. [1985 c 30 § 5. Prior: 1984 c 149 § 8; 1965 c 145 § 11.28.240; prior: 1941 c 206 § 1; 1939 c 132 § 1; 1917 c 156 § 64; Rem. Supp. 1941 § 1434.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Award in lieu of homestead—Notice of hearing: RCW 11.52.014.

Awards—Closure of estate: RCW 11.52.050.

Borrowing on general credit of estate—Petition—Notice—Hearing: RCW 11.56.280.

Claim of personal representative: RCW 11.40.140.

Continuation of decedent's business: RCW 11.48.025.

Purchase of claims by personal representative: RCW 11.48.080.

Report of personal representative, notice of hearing: RCW 11.76.020, 11.76.040.

Sales, exchanges, leases, mortgages and borrowing: Chapter 11.56 RCW.

Solvency, order of: RCW 11.68.010.

11.28.250 Revocation of letters—Causes. Whenever the court has reason to believe that any personal representative has wasted, embezzled, or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed, or is about to commit a fraud upon the estate, or is incompetent to act, or is permanently removed from the state, or has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative, or for any other cause or reason which to the court appears necessary, it shall have power and authority, after notice and hearing to revoke such letters. The manner of the notice and of the service of the same and of the time of hearing shall be wholly in the discretion of the court, and if the court for any such reasons revokes such letters the powers of such personal representative shall at once cease, and it shall be the duty of the court to immediately appoint some other personal representative, as in this title provided. [1965 c 145 § 11.28.250. Prior: 1917

c 156 § 74; RRS § 1444; prior: Code 1881 § 1414; 1863 p 218 § 112; 1860 p 186 § 114.]

Absentee estates, removal of trustee: RCW 11.80.060.

Accounting on revocation of letters: RCW 11.28.290.

Administrator de bonis non: RCW 11.28.280.

Cancellation of letters of administration: RCW 11.28.160.

Effect on compensation of personal representative who fails to discharge duties: RCW 11.48.210.

Nonintervention wills—Procedure when executor recreant to trust: RCW 11.68.030.

Notice to creditors when personal representative removed: RCW 11.40.150.

Revocation of letters

by discovery of will: RCW 11.28.150.

upon conviction of crime or becoming of unsound mind: RCW 11.36.010.

11.28.260 Revocation of letters—Proceedings in court or chambers. The applications and acts authorized by RCW 11.28.250 may be heard and determined in court or at chambers. All orders made therein must be entered upon the minutes of the court. [1965 c 145 § 11.28.260. Prior: 1917 c 156 § 75; RRS § 1445; prior: 1891 p 384 § 17; Code 1881 § 1413; 1877 p 213 § 4.]

11.28.270 Powers of remaining personal representatives if letters to associates revoked. If there be more than one personal representative of an estate, and the letters to part of them be revoked or surrendered, or a part die or in any way become disqualified, those who remain shall perform all the duties required by law. [1965 c 145 § 11.28.270. Prior: 1917 c 156 § 76; RRS § 1446; prior: Code 1881 § 1427; 1854 p 273 § 38.]

11.28.280 Administrator de bonis non. If the personal representative of an estate dies, resigns, or the letters are revoked before the settlement of the estate, letters of administration of the estate remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator de bonis non shall perform like duties and incur like liabilities as the former personal representative, and shall serve as administrator with will annexed de bonis non in the event a will has been admitted to probate. Said administrator de bonis non may, upon satisfying the requirements and complying with the procedures provided in chapter 11.68 RCW, administer the estate of the decedent without the intervention of court. [1974 ex.s. c 117 § 26; 1965 c 145 § 11.28.280. Prior: 1955 c 205 § 8; 1917 c 156 § 77; RRS § 1447; prior: Code 1881 § 1428.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.290 Accounting on death, resignation, or revocation of letters. If any personal representative resign, or his letters be revoked, or he die, he or his representatives shall account for, pay, and deliver to his successor or to the surviving or remaining personal representatives, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the

deceased, at such time and in such manner as the court shall order on final settlement with such personal representative or his legal representatives. [1965 c 145 § 11.28.290. Prior: 1917 c 156 § 78; RRS § 1448; prior: Code 1881 § 1429; 1854 p 273 § 40.]

11.28.300 Proceedings against delinquent personal representative. The succeeding administrator, or remaining personal representative may proceed by law against any delinquent former personal representative, or his personal representatives, or the sureties of either, or against any other person possessed of any part of the estate. [1965 c 145 § 11.28.300. Prior: 1917 c 156 § 79; RRS § 1449; prior: 1891 p 384 § 20; Code 1881 § 1430; 1854 p 273 § 41.]

Limitation of action against sureties: RCW 11.28.235.

11.28.330 Notice of adjudication of testacy or intestacy and heirship—Contents—Service or mailing. If no personal representative is appointed to administer the estate of a decedent, the person obtaining the adjudication of testacy, or intestacy and heirship, shall, cause written notice of said adjudication to be mailed to each heir, legatee, and devisee of the decedent, which notice shall contain the name of the decedent's estate and the probate cause number, and shall:

- (1) State the name and address of the applicant;
- (2) State that on the ----- day of -----, 19--, the applicant obtained an order from the superior court of ----- county, state of Washington, adjudicating that the decedent died intestate, or testate, whichever shall be the case;
- (3) In the event the decedent died testate, enclose a copy of his will therewith, and state that the adjudication of testacy will become final and conclusive for all legal intents and purposes unless any heir, legatee, or devisee of the decedent shall contest said will within four months after the date the said will was adjudicated to be the last will and testament of the decedent;
- (4) In the event that the decedent died intestate, set forth the names and addresses of the heirs of the decedent, their relationship to the decedent, the distributive shares of the estate of the decedent which they are entitled to receive, and that said adjudication of intestacy and heirship shall become final and conclusive for all legal intents and purposes, unless, within four months of the date of said adjudication of intestacy, a petition shall be filed seeking the admission of a will of the decedent for probate, or contesting the adjudication of heirship.

Notices provided for in this section may be served personally or sent by regular mail, and proof of such service or mailing shall be made by an affidavit filed in the cause. [1974 ex.s. c 117 § 31.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.28.340 Order of adjudication of testacy or intestacy and heirship—Entry—Time limitation—Deemed final decree of distribution, when—Purpose—Finality of adjudications. Unless, within four

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months after the entry of the order adjudicating testacy or intestacy and heirship, and the mailing or service of the notice required in RCW 11.28.330 any heir, legatee or devisee of the decedent shall offer a later will for probate or contest an adjudication of testacy in the manner provided in this title for will contests, or offer a will of the decedent for probate following an adjudication of intestacy and heirship, or contesting the determination of heirship, an order adjudicating testacy or intestacy and heirship without appointing a personal representative to administer a decedent's estate shall, as to those persons by whom notice was waived or to whom said notice was mailed or on whom served, be deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW for the purpose of:

(1) Establishing the decedent's will as his last will and testament and persons entitled to receive his estate thereunder; or

(2) Establishing the fact that the decedent died intestate, and those persons entitled to receive his estate as his heirs at law.

The right of an heir, legatee, or devisee to receive the assets of a decedent shall, to the extent otherwise provided by this title, be subject to the prior rights of the decedent's creditors and of any persons entitled to a homestead award or award in lieu of homestead or family allowance, and nothing contained in this section shall be deemed to alter or diminish such prior rights, or to prohibit any person for good cause shown, from obtaining the appointment of a personal representative to administer the estate of the decedent after the entry of an order adjudicating testacy or intestacy and heirship. However, if the petition for letters testamentary or of administration shall be filed more than four months after the date of the adjudication of testacy or of intestacy and heirship, the issuance of such letters shall not affect the finality of said adjudications. [1977 ex.s. c 234 § 7; 1974 ex.s. c 117 § 32.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Chapter 11.32

SPECIAL ADMINISTRATORS

Sections

11.32.010	Appointment of.
11.32.020	Bond.
11.32.030	Powers and duties.
11.32.040	Succession by personal representative.
11.32.050	Not liable to creditors.
11.32.060	To render account.

11.32.010 Appointment of. When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the

deceased; and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust until he shall be otherwise ordered by the appellate court. [1965 c 145 § 11.32.010. Prior: 1917 c 156 § 81; RRS § 1451; prior: 1891 p 384 § 19; Code 1881 § 1419; 1863 p 222 § 137; 1860 p 184 § 104.]

11.32.020 Bond. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the state of Washington, with conditions as required of an executor or in other cases of administration: *Provided*, That in all cases where a bank or trust company authorized to act as administrator is appointed special administrator or acts as special administrator under an appointment as such heretofore made, no bond shall be required. [1965 c 145 § 11.32.020. Prior: 1963 c 46 § 2; 1917 c 156 § 82; RRS § 1452; prior: Code 1881 § 1420; 1863 pp 220, 222 §§ 126, 138; 1860 pp 183, 184 §§ 93, 105.]

Bond of personal representative: RCW 11.28.185.

11.32.030 Powers and duties. Such special administrator shall collect all the goods, chattels, money, effects, and debts of the deceased, and preserve the same for the personal representative who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court. The appointment may be for a specified time, to perform duties respecting specific property, or to perform particular acts, as stated in the order of appointment. Such special administrator shall be allowed such compensation for his services as the said court shall deem reasonable, together with reasonable fees for his attorney. [1965 c 145 § 11.32.030. Prior: 1917 c 156 § 83; RRS § 1453; prior: Code 1881 § 1421; 1863 p 222 § 139; 1860 p 185 § 106.]

11.32.040 Succession by personal representative. Upon granting letters testamentary or of administration the power of the special administrator shall cease, and he shall forthwith deliver to the personal representative all the goods, chattels, money, effects, and debts of the deceased in his hands, and the personal representative may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former personal representative. The estate shall be liable for obligations incurred by the special administrator pursuant to the order of appointment or approved by the court. [1965 c 145 § 11.32.040. Prior: 1917 c 156 § 84; RRS § 1454; prior: Code 1881 § 1422; 1863 p 233 § 140; 1860 p 185 § 107.]

11.32.050 Not liable to creditors. Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time

of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted. [1965 c 145 § 11.32.050. Prior: 1917 c 156 § 85; RRS § 1455; prior: Code 1881 § 1423; 1863 p 223 § 141; 1860 p 185 § 108.]

11.32.060 To render account. The special administrator shall also render an account, under oath, of his proceedings, in like manner as other administrators are required to do. [1965 c 145 § 11.32.060. Prior: 1917 c 156 § 86; RRS § 1456; prior: Code 1881 § 1424; 1863 p 223 § 142; 1860 p 185 § 109.]

Settlement of estates: Chapter 11.76 RCW.

**Chapter 11.36
QUALIFICATIONS OF PERSONAL
REPRESENTATIVES**

Sections	
11.36.010	Parties disqualified—Result of disqualification after appointment.
11.36.021	Trustees—Who may serve.

11.36.010 Parties disqualified—Result of disqualification after appointment. The following persons are not qualified to act as personal representatives: Corporations, minors, persons of unsound mind, or persons who have been convicted of any felony or of a misdemeanor involving moral turpitude: *Provided*, That trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of decedents' or incompetents' estates upon petition of any person having a right to such appointment and may act as executors or guardians when so appointed by will: *Provided further*, That professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys may act as personal representatives. No trust company or national bank may qualify as such executor or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank. When any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters. A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative shall file a bond to

be approved by the court. [1983 c 51 § 1; 1983 c 3 § 14; 1965 c 145 § 11.36.010. Prior: 1959 c 43 § 1; 1917 c 156 § 87; RRS § 1457; prior: Code 1881 § 1409; 1863 p 227 § 164; 1860 p 189 § 131.]

Rules of court: Counsel fees: *SPR 98.12W*.

Banks and trust companies may act as guardian: *RCW 11.88.020*.

Procedure during minority or absence of executor: *RCW 11.28.040*.

Trust company may act as personal representative: *RCW 30.08.150*.

11.36.021 Trustees—Who may serve. (1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys; and

(e) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of any felony or a misdemeanor involving moral turpitude; and

(b) A corporation organized under Title 23A RCW that is not authorized under the laws of the state of Washington to act as a fiduciary. [1985 c 30 § 6. Prior: 1984 c 149 § 9.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.40

CLAIMS AGAINST ESTATE

Sections

11.40.010	Publication of notice to creditors—Manner—Failure to file—Proof of publication—When not required.
11.40.011	Service and filing of claims involving liability or casualty insurance—Limitations.
11.40.020	Claims—Contents—Form—Affidavit not required.
11.40.030	Allowance or rejection of claims—Time limitation for rejection—Notification of rejection—Requirements—Compromise of claim.
11.40.040	Effect of allowance.
11.40.060	Suit on rejected claim.
11.40.070	Outlawed claims.
11.40.080	Claims must be presented.
11.40.090	Limitation tolled by vacancy.
11.40.100	Action pending at death of testator—Substitution of personal representative as defendant.
11.40.110	Partial allowance of claim—Costs.
11.40.120	Effect of judgment against personal representative.
11.40.130	Judgment against decedent—Payment.
11.40.140	Claim of personal representative.
11.40.150	Notice to creditors when personal representative resigns, dies, or is removed.

Action on claim not acted on—Contribution: *RCW 11.76.170*.

Contingent or disputed claims, procedure: *RCW 11.76.190*.

Evidence, transaction with person since deceased: *RCW 5.60.030*.

Guardianship—Claims: *RCW 11.92.035*.

Incompetent, deceased, claims against estate of: *RCW 11.88.150*.

Judgment against executor or administrator, effect: *RCW 4.56.050*.

Liability of personal representative: *RCW 11.76.160*.

Limitation of actions: *Chapter 4.16 RCW*.

Order maturing claim not due: *RCW 11.76.180*.

Order of payment of debts: *RCW 11.76.110*.

Payment of claims where estate insufficient: *RCW 11.76.150*.

Quasi-community property—Lifetime transfers—Claims by surviving spouse: *RCW 26.16.240*.

Sale, etc., of property—Priority as to realty or personalty: *RCW 11.56.015*.

Survival of actions: *Chapter 4.20 RCW*.

Tax constitutes debt—Priority of lien: *RCW 82.32.240*.

11.40.010 Publication of notice to creditors—Manner—Failure to file—Proof of publication—When not required.

Every personal representative shall, immediately after his appointment, cause to be published in a legal newspaper published in the county in which the estate is being administered, a notice that he has been appointed and has qualified as such personal representative, and therewith a notice to the creditors of the deceased, requiring all persons having claims against the deceased to serve the same on the personal representative or his attorney of record, and file an executed copy thereof with the clerk of the court, within four months after the date of the first publication of such notice or within four months after the date of the filing of the copy of said notice to creditors with the clerk of the court, whichever is the later. Such notice shall be published once in each week for three successive weeks and a copy of said notice shall be filed with the clerk of the court. If a claim be not filed within the time aforesaid, it shall be barred, except under those provisions included in RCW 11.40.011. Proof by affidavit of the publication of such notice shall be filed with the court by the personal representative. In cases where all the property is awarded to the widow, husband, or children as in this title provided, the notice to creditors herein provided for may be omitted. [1974 ex.s. c 117 § 33; 1967 c 168 § 7; 1965 c 145 § 11.40.010. Prior: 1923 c 142 § 3; 1917 c 156 § 107; RRS § 1477; prior: Code 1881 § 1465; 1860 p 195 § 157; 1854 p 280 § 78.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Publication of legal notices: *Chapter 65.16 RCW*.

Settlement without intervention, notice to creditors: *RCW 11.68.010*.

11.40.011 Service and filing of claims involving liability or casualty insurance—Limitations. The four-month time limitation for serving and filing of claims shall not accrue to the benefit of any liability or casualty insurer as to claims against the deceased and/or the marital community of which the deceased was a member and such claims, subject to applicable statutes of limitation, may at any time be:

(1) Served on the personal representative, or the attorney for the estate; or

(2) If the personal representative shall have been discharged, then the claimant as a creditor may cause a new personal representative to be appointed and the estate to be reopened in which case service may be had upon the new personal representative or his attorney of record.

Claims may be served and filed as herein provided, notwithstanding the conclusion of any probate proceedings: *Provided*, That the amount of recovery under such claims shall not exceed the amount of applicable insurance coverages and proceeds: *And provided further*, That such claims so served and filed shall not constitute a cloud or lien upon the title to the assets of the estate under probate nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate subject to such probate. Nothing in this section serves to extend the applicable statute of limitations regardless of the appointment or failure to have appointed a personal representative for an estate. [1983 c 201 § 1; 1967 ex.s. c 106 § 3.]

Reviser's note: 1967 c 168 § 8 added a new section to chapter 145, Laws of 1965 and to chapter 11.40 RCW to be designated as RCW 11.40.011. 1967 c 168 § 8 was repealed by 1967 ex.s. c 106 § 4.

Applicability—1983 c 201: "The provisions of this 1983 amendatory act apply to causes of actions arising on or after July 24, 1983." [1983 c 201 § 2.]

Effective date—1967 ex.s. c 106: See note following RCW 11.56.110.

11.40.020 Claims—Contents—Form—Affidavit not required. Every claim shall be signed by the claimant, or his attorney, or any person who is authorized to sign claims on his, her, or its behalf, and shall contain the following information:

- (1) The name and address of the claimant;
- (2) The name, business address (if different from that of the claimant), and nature of authority of any person signing the claim on behalf of the claimant;
- (3) A written statement of the facts or circumstances constituting the basis upon which the claim is submitted;
- (4) The amount of the claim;
- (5) If the claim is secured, unliquidated or contingent, or not yet due, the nature of the security, the nature of the uncertainty, and due date of the claim: *Provided however*, That failure to describe correctly the security, nature of any uncertainty, or the due date of a claim not yet due, if such failure is not substantially misleading, does not invalidate the presentation made.

Claims need not be supported by affidavit. [1974 ex.s. c 117 § 34; 1965 c 145 § 11.40.020. Prior: 1917 c 156 § 108; RRS § 1478; prior: 1883 p 29 § 1; Code 1881 § 1468.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.030 Allowance or rejection of claims—Time limitation for rejection—Notification of rejection—Requirements—Compromise of claim. (1) Unless the personal representative shall, within six months after the date of first publication of notice to creditors, or within six months after the date of filing of a copy of the notice to creditors with the clerk of the court, whichever is

later, have obtained an order extending the time for his allowance or rejection of claims timely and properly served and filed, all claims not exceeding one thousand dollars presented within the time and in the manner provided in RCW 11.40.010 and 11.40.020 as now or hereafter amended, shall be deemed allowed and may not thereafter be rejected, unless the personal representative shall, within six months after the date of first publication of notice to creditors or within six months after the date of filing of a copy of the notice to creditors with the clerk of the court, whichever is later, or any extended time, notify the claimant of its rejection, in whole or in part.

(2) When a claim exceeding one thousand dollars is presented within the time and in the manner provided in RCW 11.40.010 and 11.40.020 as now or hereafter amended, it shall be the duty of the personal representative to indorse thereon his allowance or rejection. A claimant after a claim has been on file for at least thirty days may notify the personal representative that he will petition the court to have the claim allowed. If the personal representative fails to file an allowance or rejection of such claim twenty days after the receipt of such notice, the claimant may note the matter up for hearing and the court shall hear the matter and determine whether the claim should be allowed or rejected, in whole or in part. If at the hearing the claim is substantially allowed the court may allow petitioner reasonable attorney's fees of not less than one hundred dollars chargeable against the estate.

(3) If the personal representative shall reject the claim, in whole or in part, he shall notify the claimant of said rejection and file in the office of the clerk, an affidavit showing such notification and the date thereof. Said notification shall be by personal service or certified mail addressed to the claimant at his address as stated in the claim; if a person other than the claimant shall have signed said claim for or on behalf of the claimant, and said person's business address as stated in said claim is different from that of the claimant, notification of rejection shall also be made by personal service or certified mail upon said person; the date of the postmark shall be the date of notification. The notification of rejection shall advise the claimant, and the person making claim on his, her, or its behalf, if any, that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or before expiration of the time for serving and filing claims against the estate, whichever period is longer, and that otherwise the claim will be forever barred.

(4) The personal representative may, either before or after rejection of any claim compromise said claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the personal representative that such compromise is in the best interests of the estate. [1977 ex.s. c 234 § 8; 1974 ex.s. c 117 § 35; 1965 c 145 § 11.40.030. Prior: 1963 c 43 § 1; 1917 c 156 § 109; RRS § 1479; prior: Code 1881 § 1469; 1873 p 285 § 156; 1854 p 281 § 82.]

Rules of court: SPR 98.08W, 98.10W, 98.12W.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.040 Effect of allowance. Every claim which has been allowed by the personal representative shall be ranked among the acknowledged debts of the estate to be paid in the course of administration. [1974 ex.s. c 117 § 36; 1965 c 145 § 11.40.040. Prior: 1917 c 156 § 110; RRS § 1480; prior: Code 1881 § 1470; 1854 p 281 § 83.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Order of payment of debts: RCW 11.76.110.

11.40.060 Suit on rejected claim. When a claim is rejected by the personal representative, the holder must bring suit in the proper court against the personal representative within thirty days after notification of the rejection or before expiration of the time for serving and filing claims against the estate, whichever period is longer, otherwise the claim shall be forever barred. [1974 ex.s. c 117 § 37; 1965 c 145 § 11.40.060. Prior: 1917 c 156 § 112; RRS § 1482; prior: Code 1881 § 1472; 1873 p 285 § 159; 1869 p 166 § 665; 1854 p 281 § 84.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.070 Outlawed claims. No claim shall be allowed by the personal representative or court which is barred by the statute of limitations. [1965 c 145 § 11.40.070. Prior: 1917 c 156 § 113; RRS § 1483; prior: Code 1881 § 1473; 1854 p 281 § 85.]

11.40.080 Claims must be presented. No holder of any claim against a decedent shall maintain an action thereon, unless the claim shall have been first presented as herein provided. [1965 c 145 § 11.40.080. Prior: 1917 c 156 § 114; RRS § 1484; prior: Code 1881 § 1474; 1854 p 281 § 86.]

11.40.090 Limitation tolled by vacancy. The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed. [1965 c 145 § 11.40.090. Prior: 1917 c 156 § 115; RRS § 1485; prior: Code 1881 § 1475; 1854 p 281 § 87.]

11.40.100 Action pending at death of testator—Substitution of personal representative as defendant. If any action be pending against the testator or intestate at the time of his death, the plaintiff shall within four months after first publication of notice to creditors, or the filing of a copy of such notice, whichever is later, serve on the personal representative a motion to have such personal representative, as such, substituted as defendant in such action, and, upon the hearing of such motion, such personal representative shall be so substituted, unless, at or prior to such hearing, the claim of

plaintiff, together with costs, be allowed by the personal representative and court. After the substitution of such personal representative, the court shall proceed to hear and determine the action as in other civil cases. [1974 ex.s. c 117 § 47; 1965 c 145 § 11.40.100. Prior: 1917 c 156 § 116; RRS § 1486; prior: Code 1881 § 1476; 1854 p 281 § 88.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.110 Partial allowance of claim—Costs. Whenever any claim shall have been filed and presented to a personal representative, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the personal representative unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs. [1974 ex.s. c 117 § 38; 1965 c 145 § 11.40.110. Prior: 1917 c 156 § 117; RRS § 1487; prior: Code 1881 § 1477; 1854 p 282 § 89.]

Rules of court: SPR 98.08W.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.40.120 Effect of judgment against personal representative. The effect of any judgment rendered against any personal representative shall be only to establish the amount of the judgment as an allowed claim. [1965 c 145 § 11.40.120. Prior: 1917 c 156 § 118; RRS § 1488; prior: Code 1881 § 1478; 1854 p 282 § 90.]

11.40.130 Judgment against decedent—Payment. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the personal representative, as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: *Provided, however,* That if it be a lien on any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the personal representative for any surplus in his hands. [1965 c 145 § 11.40.130. Prior: 1917 c 156 § 119; RRS § 1489; prior: Code 1881 § 1479; 1854 p 292 § 91.]

11.40.140 Claim of personal representative. If the personal representative is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be filed and presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness. This section shall apply to nonintervention and all other wills. [1965 c 145 § 11.40.140. Prior: 1917 c 156 § 120; RRS § 1490; prior: Code 1881 § 1482; 1854 p 283 § 94.]

Request for special notice in proceedings in probate: RCW 11.28.240.

11.40.150 Notice to creditors when personal representative resigns, dies, or is removed. In case of resignation, death or removal for any cause of any personal representative, and the appointment of another or others, after notice has been given by publication as required by RCW 11.40.010, by such personal representative first appointed, to persons to file their claims against the decedent, it shall be the duty of the successor or personal representative to cause notice of such resignation, death or removal and such new appointment to be published two successive weeks in a legal newspaper published in the county in which the estate is being administered, but the time between the resignation, death or removal and such publication shall be added to the time within which claims shall be filed as fixed by the published notice to creditors unless such time shall have expired before such resignation or removal or death: *Provided, however,* That no such notice shall be required if the period for filing claims was fully expired during the time that the former personal representative was qualified. [1965 c 145 § 11.40.150. Prior: 1939 c 26 § 1; 1917 c 156 § 121; RRS § 1491; prior: 1891 c 155 § 28; Code 1881 § 1485; 1873 p 288 § 172; 1867 p 106 § 3.]

Chapter 11.44

INVENTORY AND APPRAISEMENT

Sections

11.44.015	Inventory.
11.44.025	Additional inventory.
11.44.035	Inventory or appraisement may be contradicted.
11.44.050	Failure to return inventory—Revocation of letters.
11.44.061	Value for appraisement and inheritance tax purposes.
11.44.066	Duties of personal representative—Assistants— Filing—Copies.
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11.44.085	Claims against personal representative to be included.
11.44.090	Discharge of debt to be construed as specific bequest and included.

Partnerships, inventory and appraisement: RCW 11.64.002.

11.44.015 Inventory. Within three months after his appointment, unless a longer time shall be granted by the court, every personal representative shall make and return upon oath into the court a true inventory of all of the property of the estate which shall have come to his possession or knowledge, including a statement of all encumbrances, liens or other secured charges against any item. Such property shall be classified as follows:

- (1) Real property, by legal description and assessed valuation of land and improvements thereon;
- (2) Stocks and bonds;
- (3) Mortgages, notes, and other written evidences of debt;
- (4) Bank accounts and money;
- (5) Furniture and household goods;
- (6) All other personal property accurately identified, including the decedent's proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative. [1967 c

168 § 9; 1965 c 145 § 11.44.015. Formerly RCW 11.44.010, part and 11.44.020, part.]

Inventory, settlement of estates without administration: RCW 11.68.010.

Inventory and appraisement on death of partner—Filing: RCW 11.64.002.

Right to wind up partnership: RCW 25.04.370.

11.44.025 Additional inventory. Whenever any property of the estate not mentioned in the inventory comes to the knowledge of a personal representative, he shall cause the same to be inventoried and appraised and shall make and return upon oath into the court a true inventory of said property within thirty days after the discovery thereof, unless a longer time shall be granted by the court. [1974 ex.s. c 117 § 48; 1965 c 145 § 11.44.025. Prior: 1917 c 156 § 100; RCW 11.44.060; RRS § 1470; prior: Code 1881 § 1453; 1873 p 281 § 138; 1854 p 277 § 64.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.44.035 Inventory or appraisement may be contradicted. In an action against the personal representative where his administration of the estate, or any part thereof, is put in issue and the inventory of the estate returned by him, or the appraisal thereof is given in evidence, the same may be contradicted or avoided by evidence. Any party in interest in the estate may challenge the inventory or appraisement at any stage of the probate proceedings. [1965 c 145 § 11.44.035. Prior: Code 1881 § 721; 1877 p 146 § 725; 1869 p 166 § 662; RCW 11.48.170; RRS § 970.]

11.44.050 Failure to return inventory—Revocation of letters. If any personal representative shall neglect or refuse to return the inventory within the period prescribed, or within such further time as the court may allow, the court may revoke the letters testamentary or of administration; and the personal representative shall be liable on his bond to any party interested for the injury sustained by the estate through his neglect. [1965 c 145 § 11.44.050. Prior: 1917 c 156 § 99; RRS § 1469; prior: Code 1881 § 1457; 1873 p 281 § 138; 1854 p 278 § 69.]

11.44.061 Value for appraisement and inheritance tax purposes. The value of the estate and effects of deceased persons determined under the probate law shall be the value for appraisement and inheritance tax purposes, except where the same estate is valued for federal estate tax purposes, and the valuation is adjusted according to federal appraisement in accordance with *RCW 83.40.040. [1965 c 145 § 11.44.060.]

*Reviser's note: RCW 83.40.040 was repealed by 1981 2nd ex.s. c 7 § 83.100.160, effective January 1, 1982. For later enactment, see chapter 83.100 RCW.

11.44.066 Duties of personal representative—Assistants—Filing—Copies. Within the time required to file an inventory as provided in RCW 11.44.015, the personal representative shall determine the fair net value, as of the date of the decedent's death, of each

item contained in the inventory after deducting the encumbrances, liens, and other secured charges thereon. The personal representative may employ a qualified and disinterested person to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The appraisal may, but need not be, filed in the probate cause: *Provided however*, That upon receipt of a written request for a copy of said inventory and appraisal from any heir, legatee, devisee or unpaid creditor who has filed a claim, or from the inheritance tax division of the department of revenue, the personal representative shall furnish to said person, a true and correct copy thereof. [1974 ex.s. c 117 § 49.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.
Estate and transfer tax reform act: Chapter 83.100 RCW.

11.44.070 Compensation of persons assisting in appraisal—Refund. The amount of the fee to be paid to any persons assisting the personal representative in any appraisal shall be determined by the personal representative: *Provided however*, That the reasonableness of any such compensation shall, at the time of hearing on any final account as provided in chapter 11.76 RCW or on a request or petition under RCW 11.68.100 or 11.68.110, be reviewed by the court in accordance with the provisions of RCW 11.68.100, and if the court determines the compensation to be unreasonable, a personal representative may be ordered to make appropriate refund. [1974 ex.s. c 117 § 50; 1967 c 168 § 10; 1965 c 145 § 11.44.070. Formerly RCW 11.44.010, part.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.
Effective date—1965 c 145: See RCW 11.99.010.

11.44.085 Claims against personal representative to be included. The naming or the appointment of any person as personal representative shall not operate as a discharge from any just claim which the testator or intestate had against the personal representative, but the claim shall be included in the inventory and the personal representative shall be liable to the same extent as he would have been had he not been appointed personal representative. [1965 c 145 § 11.44.085. Prior: 1917 c 156 § 97; RCW 11.44.030; RRS § 1467; prior: Code 1881 § 1449; 1860 p 63 § 5; 1854 p 277 § 60.]

11.44.090 Discharge of debt to be construed as specific bequest and included. The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will or against any person shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be

paid in the same manner and proportions as other specific legacies. [1965 c 145 § 11.44.090. Prior: 1917 c 156 § 98; RCW 11.44.040; RRS § 1468; prior: Code 1881 § 1450; 1854 p 277 § 61.]

Chapter 11.48

PERSONAL REPRESENTATIVES—GENERAL PROVISIONS—ACTIONS BY AND AGAINST

Sections

11.48.010	General powers and duties.
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11.48.025	Continuation of decedent's business.
11.48.030	Chargeable with whole estate.
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11.48.120	Action on bond of previous personal representative.
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11.48.140	Recovery of decedent's fraudulent conveyances.
11.48.150	Several personal representatives considered as one.
11.48.160	Default judgment not evidence of assets—Exception.
11.48.180	Liability of executor de son tort.
11.48.190	Executor of executor may not sue for estate of first testator.
11.48.200	Arrest and attachment, when, authorized.
11.48.210	Compensation—Attorney's fee.

Rules of court: Executors

compromises and settlements: SPR 98.08W, 98.10W.
fees, application for, notice: SPR 98.12W.

Costs against fiduciaries: RCW 4.84.150.

District judge without jurisdiction as to actions against personal representative: RCW 3.66.030.

Ejectment and quieting title: Chapter 7.28 RCW.

Evidence, transaction with person since deceased: RCW 5.60.030.

Execution of writ—Levy: RCW 6.17.130.

Execution on judgments in name of personal representative: RCW 6.17.030.

Executor, administrator, subject to garnishment: RCW 6.27.050.

Fiduciary may sue in own name: Rules of court: CR 17.

Frauds, statute of, agreement of personal representative to answer damages from own estate: RCW 19.36.010.

Investment in certain federal securities authorized: Chapter 39.60 RCW.

Judgment against executor, administrator, effect: RCW 4.56.050.

Larceny: RCW 9A.56.100.

Limitation of actions

against executor, administrator for misconduct: RCW 4.16.110.
generally: Chapter 4.16 RCW.

recovery of realty sold by personal representative: RCW 4.16.070.
statutes tolled by death, personal disability, reversal of judgment: RCW 4.16.190, 4.16.200, 4.16.240.

Real estate broker's license requirement, exemption: RCW 18.85.110.

Replacement of lost or destroyed probate records: RCW 5.48.060.

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Survival of actions: Chapter 4.20 RCW.

"Taxable person", personal representative defined as: RCW 82.04.030.

Unknown heirs, pleading, lis pendens, etc: RCW 4.28.140 through 4.28.160; Rules of court: CR 10.

Witnesses, competency in actions involving representatives or fiduciaries: RCW 5.60.030.

11.48.010 General powers and duties. It shall be the duty of every personal representative to settle the estate in his hands as rapidly and as quickly as possible, without sacrifice to the estate. He shall collect all debts due the deceased and pay all debts as hereinafter provided. He shall be authorized in his own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character. [1965 c 145 § 11.48.010. Prior: 1917 c 156 § 147; RRS § 1517; prior: Code 1881 § 1528; 1854 p 291 § 141.]

11.48.020 Right to possession and management of estate. Every personal representative shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenantable repair all houses, buildings and fixtures thereon, which are under his control. [1965 c 145 § 11.48.020. Prior: 1917 c 156 § 94; RRS § 1464; prior: Code 1881 § 1444; 1860 p 189 § 132; 1854 p 278 § 65.]

When title vests: RCW 11.04.250.

11.48.025 Continuation of decedent's business. Upon a showing of advantage to the estate the court may authorize a personal representative to continue any business of the decedent, other than the business of a partnership of which the decedent was a member: *Provided*, That if decedent left a nonintervention will or a will specifically authorizing a personal representative to continue any business of decedent, and his estate is solvent, or a will providing that the personal representative liquidate any business of decedent, this section shall not apply.

The order shall specify:

- (1) The extent of the authority of the personal representative to incur liabilities;
- (2) The period of time during which he may operate the business;
- (3) Any additional provisions or restrictions which the court may, at its discretion, include.

Any interested person may for good cause require the personal representative to show cause why the authority granted him should not be limited or terminated. The order to show cause shall set forth the manner of service thereof and the time and place of hearing thereon. [1965 c 145 § 11.48.025. Prior: 1955 c 98 § 1.]

Request for special notice of proceedings in probate: RCW 11.28.240.

11.48.030 Chargeable with whole estate. Every personal representative shall be chargeable in his accounts with the whole estate of the deceased which may come into his possession. He shall not be responsible for loss or decrease or destruction of any of the property or effects of the estate, without his fault. [1965 c 145 § 11.48.030.

Prior: 1917 c 156 § 155; RRS § 1525; prior: Code 1881 § 1538; 1860 p 210 § 241; 1854 p 295 § 161.]

11.48.040 Not chargeable on special promise to pay decedent's debts unless in writing. No personal representative shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such personal representative, or by some other person by him thereunto specially authorized. [1965 c 145 § 11.48.040. Prior: 1917 c 156 § 154; RRS § 1524; prior: Code 1881 § 1537; 1854 p 295 § 160.]

Agreement to answer damages from own estate must be in writing: RCW 19.36.010.

11.48.050 Allowance of necessary expenses. He shall be allowed all necessary expenses in the care, management and settlement of the estate. [1965 c 145 § 11.48.050. Prior: 1917 c 156 § 156; RRS § 1526; prior: Code 1881 § 1541; 1854 p 295 § 164.]

Rules of court: SPR 98.12W.

Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.

Broker's fee and closing expenses—Sale, mortgage or lease: RCW 11.56.265.

Compensation—Attorney's fee: RCW 11.48.210.

Monument, expense of: RCW 11.76.130.

Order of payment of debts: RCW 11.76.110.

Will contests, costs: RCW 11.24.050.

11.48.060 May recover for embezzled or alienated property of decedent. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the personal representative of the estate, in the value of the property so embezzled or alienated, together with any damage occasioned thereby, to be recovered for the benefit of the estate. [1965 c 145 § 11.48.060. Prior: 1917 c 156 § 101; RRS § 1471; prior: Code 1881 § 1455; 1854 p 278 § 67.]

Larceny: RCW 9A.56.100.

11.48.070 Concealed or embezzled property—Proceedings for discovery. The court shall have authority to bring before it any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of decedents or incompetents subject to administration under this title, or who has in his possession or within his knowledge any conveyances, bonds, contracts, or other writings which contain evidence of or may tend to establish the right, title, interest or claim of the deceased in and to any property. If such person be not in the county in which the letters were granted, he may be cited and examined either before the court of the county where found or before the court issuing the order of citation, and if he be found innocent of the charges he shall be entitled to recover costs of the estate, which

costs shall be fees and mileage of witnesses, statutory attorney's fees, and such per diem and mileage for the person so charged as allowed to witnesses in civil proceedings. Such party may be brought before the court by means of citation such as the court may choose to issue, and if he refuse to answer such interrogatories as may be put to him touching such matters, the court may commit him to the county jail, there to remain until he shall be willing to make such answers. [1965 c 145 § 11.48.070. Prior: 1917 c 156 § 102; RRS § 1472; prior: 1891 p 385 §§ 22, 23; Code 1881 §§ 1456, 1457; 1854 p 278 §§ 68, 69.]

Guardianship—Concealed or embezzled property—Proceedings for discovery: RCW 11.92.185.

Larceny: RCW 9A.56.100.

11.48.080 Uncollectible debts, liability for—Purchase of claims by personal representative. No personal representative shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault. No personal representative shall purchase any claim against the estate he represents, but the personal representative may make application to the court for permission to purchase certain claims, and if it appears to the court to be for the benefit of the estate that such purchase shall be made, the court may make an order allowing such claims and directing that the same may be purchased by the personal representative under such terms as the court shall order, and such claims shall thereafter be paid as are other claims, but the personal representative shall not profit thereby. [1965 c 145 § 11.48.080. Prior: 1917 c 156 § 157; RRS § 1527; prior: Code 1881 § 1540; 1854 p 295 § 163.]

Request for special notice of proceedings in probate: RCW 11.28.240.

11.48.090 Actions for recovery of property and on contract. Actions for the recovery of any property or for the possession thereof, and all actions founded upon contracts, may be maintained by and against personal representatives in all cases in which the same might have been maintained by and against their respective testators or intestates. [1965 c 145 § 11.48.090. Prior: 1917 c 156 § 148; RRS § 1518; prior: Code 1881 § 1529; 1860 p 206 § 222; 1854 p 291 § 142.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Survival of actions: Chapter 4.20 RCW.

11.48.120 Action on bond of previous personal representative. Any personal representative may in his own name, for the benefit of all parties interested in the estate, maintain actions on the bond of a former personal representative of the same estate. [1965 c 145 § 11.48.120. Prior: 1917 c 156 § 151; RRS § 1521; prior: Code 1881 § 1532; 1854 p 291 § 145.]

11.48.130 Compromise of claims. The court shall have power to authorize the personal representative to compromise and compound any claim owing the estate. [1965 c 145 § 11.48.130. Prior: 1917 c 156 § 152; RRS § 1522; prior: Code 1881 § 1533; 1854 p 291 § 146.]

Rules of court: SPR 98.08W.

11.48.140 Recovery of decedent's fraudulent conveyances. When there shall be a deficiency of assets in the hands of a personal representative, and when the deceased shall in his lifetime have conveyed any real estate, or any rights, or interest therein, with intent to defraud his creditors or to avoid any right, duty or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors, the personal representative may, and it shall be his duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance. [1965 c 145 § 11.48.140. Prior: 1917 c 156 § 153; prior: Code 1881 § 1534; 1854 p 291 § 147.]

11.48.150 Several personal representatives considered as one. In an action against several personal representatives, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action. [1965 c 145 § 11.48.150. Prior: Code 1881 § 719; 1877 p 146 § 723; 1869 p 165 § 660; RRS § 968.]

11.48.160 Default judgment not evidence of assets—Exception. When a judgment is given against a personal representative for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appear that the complaint alleged assets and that the notice was served upon him. [1965 c 145 § 11.48.160. Prior: Code 1881 § 720; 1877 p 146 § 724; 1869 p 166 § 661; RRS § 969.]

11.48.180 Liability of executor de son tort. No person is liable to an action as executor of his own wrong for having taken, received or interfered with the property of a deceased person, but is responsible to the personal representatives of such deceased person for the value of all property so taken or received, and for all injury caused by his interference with the estate of the deceased. [1965 c 145 § 11.48.180. Prior: Code 1881 § 722; 1877 p 146 § 726; 1869 p 166 § 663; RRS § 971.]

11.48.190 Executor of executor may not sue for estate of first testator. An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof. [1965 c 145 § 11.48.190. Prior: Code 1881 § 723; 1877 p 147 § 727; 1869 p 166 § 664; RRS § 972.]

Administrator with will annexed on death of executor: RCW 11.28.060.

11.48.200 Arrest and attachment, when, authorized. In an action against a personal representative as such,

the remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such personal representative, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally. [1965 c 145 § 11.48.200. Prior: Code 1881 § 724; 1877 p 147 § 729; 1869 p 167 § 666; RRS § 973.]

11.48.210 Compensation—Attorney's fee. If testator by will makes provision for the compensation of his personal representative, that shall be taken as his full compensation unless he files in the court a written instrument renouncing all claim for the compensation provided by the will before qualifying as personal representative. The personal representative, when no compensation is provided in the will, or when he renounces all claim to the compensation provided in the will, shall be allowed such compensation for his services as the court shall deem just and reasonable. Additional compensation may be allowed for his services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final account; but at any time during administration a personal representative or his attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees. If the court finds that the personal representative has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed. [1965 c 145 § 11.48.210. Prior: 1917 c 156 § 158; RRS § 1528; prior: Code 1881 § 1541; 1854 p 295 § 164.]

Rules of court: SPR 98.12W.

Allowance of necessary expenses: RCW 11.48.050.

Will contests, costs: RCW 11.24.050.

Chapter 11.52

PROVISIONS FOR FAMILY SUPPORT

Sections

11.52.010	Award in lieu of homestead—Petition—Requirements—Amount—Time limit for filing petition.
11.52.012	Award—Effect—Conditions under which award may be denied or reduced.
11.52.014	Award—Notice of hearing—Appointment of guardian ad litem for incompetents.
11.52.016	Award—Finality—Is in lieu—Exempt from debts—Which law applies.
11.52.020	Homestead may be awarded to survivor—Decree—Notice—Exclusions—Appointment of guardian ad litem.
11.52.022	Award in addition to homestead—Conditions under which such award may be denied or reduced.
11.52.024	Homestead and additional award—Finality—Is in lieu—Exempt from debts—Which law applies.
11.52.030	Support of minor children.
11.52.040	Further allowance for family maintenance.
11.52.050	Closure of estate—Discharge of personal representative.

(1987 Ed.)

11.52.010 Award in lieu of homestead—Petition—Requirements—Amount—Time limit for filing petition. If it is made to appear to the satisfaction of the court that no homestead has been claimed in the manner provided by law, either prior or subsequent to the death of the person whose estate is being administered, then the court, after hearing and upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, and upon petition for that purpose, shall award and set off to the surviving spouse, if any, property of the estate, either community or separate, not exceeding the value of thirty thousand dollars at the time of death, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased spouse, exclusive of the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's or materialmen's liens upon the property so set off, exclusive of debts arising out of a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay spousal maintenance and exclusive of funeral expenses, expenses of last sickness and administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse; provided that the court shall have no jurisdiction to make such award unless the petition therefor is filed with the clerk within six years from the date of the death of the person whose estate is being administered. [1987 c 442 § 1116; 1984 c 260 § 17; 1974 ex.s. c 117 § 7; 1971 ex.s. c 12 § 2; 1967 c 168 § 12; 1965 c 145 § 11.52.010. Prior: 1963 c 185 § 1; 1955 c 205 § 10; 1951 c 264 § 2; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Severability—1984 c 260: See RCW 26.18.900.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Severability—1971 ex.s. c 12: See note following RCW 6.13.030.

11.52.012 Award—Effect—Conditions under which award may be denied or reduced. Such award shall be made by an order or judgment of the court and shall vest the absolute title, and thereafter there shall be no further administration upon such portion of the estate so set off, but the remainder of the estate shall be settled as other estates: *Provided*, That no property of the estate shall be awarded or set off, as provided in RCW 11.52.010 through 11.52.024, as now or hereafter amended, to a surviving spouse who has feloniously killed the deceased spouse: *Provided further*, That if it shall appear to the court, either (1) that there are children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) if such surviving spouse or minor children are entitled to receive property not subject to probate, including insurance, by reason of the death of

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the deceased spouse in the amount specified in RCW 11.52.010, or more, then the award in lieu of homestead and exemptions shall lie in the discretion of the court, and that whether there shall be an award and the amount thereof shall be determined by the court, which shall enter such decree as shall be just and equitable but not in excess of the award provided herein. [1985 c 194 § 1; 1984 c 260 § 18; 1977 ex.s. c 234 § 9; 1974 ex.s. c 117 § 8; 1965 c 145 § 11.52.012. Prior: 1951 c 264 § 3; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Severability—1984 c 260: See RCW 26.18.900.

Application, effective date—**Severability**—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—**Severability**—**Effective date**—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Inheritance rights of slayers: Chapter 11.84 RCW.

11.52.014 Award—Notice of hearing—Appointment of guardian ad litem for incompetents. Notice of such hearing shall be given in the manner prescribed in RCW 11.76.040. If there be any incompetent heir of the decedent, the court shall appoint a guardian ad litem for such incompetent heir, who shall appear at the hearing and represent the interest of such incompetent heir. [1965 c 145 § 11.52.014. Prior: 1951 c 264 § 4; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Request for special notice of proceedings in probate: RCW 11.28.240.

11.52.016 Award—Finality—Is in lieu—Exempt from debts—Which law applies. The order of judgment of the court making the award or awards provided for in RCW 11.52.010 through 11.52.024 shall be conclusive and final, except on appeal and except for fraud. The awards in RCW 11.52.010 through 11.52.024 provided shall be in lieu of all homestead provisions of the law and of exemptions. The said property, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of the deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under RCW 11.52.010 through 11.52.024, the court shall not award more property than could be awarded under the law in effect at the time of the granting of the award. [1972 ex.s. c 80 § 1; 1965 c 145 § 11.52.016. Prior: 1951 c 264 § 5; 1949 c 102 § 1, part; 1945 c 197 § 1, part; 1927 c 185 § 1, part; 1917 c 156 § 103, part; Rem. Supp. 1949 § 1473, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Rules of court: *Method of appellate review superseded by RAP 2.2(a)(3).*

11.52.020 Homestead may be awarded to survivor—Decree—Notice—Exclusions—Appointment of guardian ad litem. In event a homestead has been, or shall be selected in the manner provided by law, whether the selection of such homestead results in vesting the complete or partial title in the survivor, it shall be the duty of the court, upon petition of any person interested, and upon being satisfied that the value thereof does not exceed at the time of the death the amount specified in RCW 11.52.010, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased and exclusive of the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's, or materialmen's liens thereon, and exclusive of funeral expenses, expenses of last sickness and of administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse, to enter a decree, upon notice as provided in RCW 11.52.014 or upon longer notice if the court so orders, setting off and awarding such homestead to the survivor, thereby vesting the title thereto in fee simple in the survivor: *Provided*, That if there be any incompetent heirs of the decedent, the court shall appoint a guardian ad litem for such incompetent heir who shall appear at the hearing and represent the interest of such incompetent heir. [1985 c 194 § 2; 1984 c 260 § 19; 1974 ex.s. c 117 § 9; 1971 ex.s. c 12 § 3; 1967 c 168 § 13; 1965 c 145 § 11.52.020. Prior: 1963 c 185 § 2; 1955 c 205 § 11; 1951 c 264 § 7; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 § 104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Severability—1984 c 260: See RCW 26.18.900.

Application, construction—**Severability**—**Effective date**—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Severability—1971 ex.s. c 12: See note following RCW 6.13.030.
Homesteads: Chapter 6.13 RCW.

11.52.022 Award in addition to homestead—Conditions under which such award may be denied or reduced. If the value of the homestead, exclusive of all such liens, be less than the amount specified in RCW 11.52.010, the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration, have been paid or provided for, shall set off and award additional property, either separate or community, in lieu of such deficiency, so that the value of the homestead, exclusive of all such liens and expenses when added to the value of the other property awarded, exclusive of all such liens and expenses shall equal the amount specified in RCW 11.52.010: *Provided*, That if it shall appear to the court, either (1) that there are children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) that such surviving spouse is, or any minor child entitled to an award under

RCW 11.52.030 is, entitled to receive property not subject to probate, including insurance by reason of the death of the deceased spouse in the amount specified in RCW 11.52.010, or more, then the award of property in addition to the homestead, where the homestead is of less than the amount specified in RCW 11.52.010, shall lie in the discretion of the court, and that whether there shall be an award in addition to the homestead and the amount thereof shall be determined by the court, which shall enter such decree as shall be just and equitable, but not in excess of the award provided herein. [1985 c 194 § 3; 1984 c 260 § 20; 1977 ex.s. c 234 § 10; 1974 ex.s. c 117 § 10; 1971 ex.s. c 12 § 4; 1965 c 145 § 11.52.022. Prior: 1963 c 185 § 3; 1951 c 264 § 8; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 § 104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Severability—1984 c 260: See RCW 26.18.900.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Severability—1971 ex.s. c 12: See note following RCW 6.13.030.

11.52.024 Homestead and additional award—Finality—Is in lieu—Exempt from debts—Which law applies. Said decree shall particularly describe the said homestead and other property so awarded, and such homestead and other property so awarded shall not be subject to further administration, and such decree shall be conclusive and final, except on appeal, and except for fraud, and such awards shall be in lieu of all further homestead rights and of all exemptions. The property in addition to the homestead, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under RCW 11.52.010 through 11.52.024, the court shall not award more property than could be awarded under the law in effect at the time of the granting of the award. [1972 ex.s. c 80 § 2; 1965 c 145 § 11.52.024. Prior: 1951 c 264 § 9; 1949 c 102 § 2, part; 1945 c 198 § 1, part; 1927 c 104 § 1, part; 1917 c 156 § 104, part; Rem. Supp. 1949 § 1474, part; prior: 1891 c 155 § 24, part; 1886 p 170 § 1, part; 1883 p 44 § 1, part; Code 1881 § 1460, part; 1877 p 209 § 3, part; 1873 p 283 § 146, part; 1854 p 279 § 71, part.]

Rules of court: *Method of appellate review superseded by RAP 2.2(a)(3).*

11.52.030 Support of minor children. If there be no surviving spouse, the court shall award and set aside to the minor child or children, if any, and in such proportions as he considers proper, property of the estate as the court may consider necessary for the care and support of said minor or minors until they become of legal age, not exceeding in value the amount which the court is now or hereafter empowered to award to a surviving spouse. [1965 c 145 § 11.52.030. Prior: 1949 c 11 § 1; 1917 c

156 § 105; Rem. Supp. 1949 § 1475; prior: Code 1881 § 1463; 1854 p 279 § 75.]

11.52.040 Further allowance for family maintenance. In addition to the awards herein provided for, the court may make such further reasonable allowance of cash out of the estate as may be necessary for the maintenance of the family according to their circumstances, during the progress of the settlement of the estate, and any such allowance shall be paid by the personal representative in preference to all other charges, except funeral charges, expenses of last sickness and expenses of administration. [1965 c 145 § 11.52.040. Prior: 1917 c 156 § 106; RRS § 1476; prior: 1891 p 386 § 25, part; 1886 p 171 § 2, part; Code 1881 § 1461, part; 1854 p 279 § 73.]

11.52.050 Closure of estate—Discharge of personal representative. If it is made to appear to the court that the amount of funeral expenses, expenses of last illness, expenses of administration, general taxes and special assessments which were liens at the time of the death of the deceased spouse together with the unpaid balance of any contract to purchase, mortgage, or mechanic's, laborer's or materialmen's liens upon the property to be set off under the provisions of RCW 11.52.010 through 11.52.024 together with the amount of the award to be made by the court under the provisions of RCW 11.52.010 through 11.52.040 shall be equal to the gross appraised value of the property of the estate, then the court at the time of making such award shall enter its judgment setting aside all of the property of the estate, subject to the aforementioned charges, to the petitioner, shall order the estate closed, discharge the executor or administrator and exonerate the executor's or administrator's bond. [1967 c 168 § 14. (i) 1965 c 145 § 11.52.050. (ii) 1965 c 126 § 1.]

Chapter 11.56

SALES, EXCHANGES, LEASES, MORTGAGES AND BORROWING

Sections

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11.56.005 Authority to exchange. Whenever it shall appear upon the petition of the personal representative or of any person interested in the estate to be to the best interests of the estate to exchange any real or personal property of the estate for other property, the court may authorize the exchange upon such terms and conditions as it may prescribe, which include the payment or receipt of part cash by the personal representative. If personal property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be; if real property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be. [1965 c 145 § 11.56.005.]

11.56.010 Authority to sell, lease or mortgage. The court may order real or personal property sold, leased or mortgaged for the purposes hereinafter mentioned but no sale, lease or mortgage of any property of an estate shall be made except under an order of the court, unless otherwise provided by law. [1965 c 145 § 11.56.010. Prior: 1917 c 156 § 122; RRS § 1492; prior: 1895 c 157 § 1; 1883 p 29 § 1; Code 1881 § 1486; 1854 p 284 § 97.]

11.56.015 Priority. In determining what property of the estate shall be sold, mortgaged or leased for any purpose provided by RCW 11.56.020 and 11.56.030, there shall be no priority as between real and personal property, except as provided by will, if any. [1965 c 145 § 11.56.015.]

Appropriation to pay debts and expenses: RCW 11.56.150.

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Payment of claims where estate insufficient: RCW 11.76.150.

Sale of generally or specifically devised realty: RCW 11.56.050.

11.56.020 Sale, lease or mortgage of personal property. The court may at any time order any personal property, including for purposes of this section a vendor's interest in a contract for the sale of real estate, of the estate sold for the preservation of such property or for the payment of the debts of the estate or the expenses of administration or for the purpose of discharging any obligation of the estate or for any other reason which may to the court seem right and proper, and such order may be made either upon or without petition

therefor, and such sales may be either at public or private sale or by negotiation and with or without notice of such sale, as the court may determine, and upon such terms and conditions as the court may decide upon. No notice of petition for sale of any personal property need be given, except as provided in RCW 11.28.240, unless the court expressly orders such notice.

Where personal property is sold prior to appraisal, the sale price shall be deemed the value for appraisal. Personal property may be mortgaged, pledged or leased for the same reasons and purposes, and in the same manner as is hereinafter provided for real property. [1965 c 145 § 11.56.020. Prior: (i) 1917 c 156 § 123; RRS § 1493; prior: 1891 c 155 §§ 29, 30; 1883 p 29 § 1; Code 1881 § 1488; 1854 p 284 § 99. (ii) 1955 c 205 § 12; RCW 11.56.025.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of decedent's contract interest in land: RCW 11.56.180.

11.56.030 Sale, lease or mortgage of real estate—Petition—Notice—Hearing. Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold, mortgaged or leased for the purpose of raising money to pay the debts and obligations of the estate, and the expenses of administration, inheritance and federal death tax or for the support of the family, to make distribution, or for such other purposes as the court may deem right and proper, the court may order the sale, lease or mortgage of such portion of the property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and obligations of the estate and such other things as will tend to assist the court in determining the necessity for the sale, lease or mortgage and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition for sale, lease or mortgage need be given, except as provided in RCW 11.28.240 hereof; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the purpose of determining whether it should order any of the property of the estate sold, leased or mortgaged. The absence of any allegation in the petition shall not deprive the court of jurisdiction to order said sale, lease or mortgage, and the court may, if it see fit, order such sale, lease or mortgage without any petition having been previously presented. [1965 c 145 § 11.56.030. Prior: 1937 c 28 § 3; 1917 c 156 § 124; RRS § 1494; prior: Code 1881 § 1493; 1854 p 285 § 103.]

11.56.040 Order directing mortgage. If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the personal representative to mortgage such thereof as it may determine upon, and such order shall contain the terms and

conditions of such transaction and authorize the personal representative to execute and deliver his note or notes and secure the same by mortgage, and thereafter it shall be the duty of such personal representative to comply with such order. The personal representative shall not deliver any such note, mortgage or other evidence of indebtedness until he has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it. [1965 c 145 § 11.56.040. Prior: 1917 c 156 § 125; RRS § 1495; prior: Code 1881 § 1494; 1854 p 285 § 104.]

11.56.045 Order directing lease. If the court should determine that it is necessary or proper, for any of the said purposes to lease any or all of said property, it may make an order directing the personal representative to lease such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute the lease and thereafter it shall be the duty of the personal representative to comply with such order. The personal representative shall not execute such lease until he has first presented the same to the court and obtained its approval of the form. [1965 c 145 § 11.56.045.]

11.56.050 Order directing sale. If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this title, then it may make and cause to be entered an order directing the personal representative to sell so much of the real estate as the court may determine necessary for the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether such property shall be sold at public or private sale, or by negotiation. The court shall order sold that part of the real estate which is generally devised, rather than any part which may have been specifically devised, but the court may, if it appears necessary, sell any or all of the real estate so devised. After the giving of such order it shall be the duty of the personal representative to sell such real estate in accordance with the order of the court and as in this title provided with reference to the public or private sales of real estate. [1965 c 145 § 11.56.050. Prior: 1917 c 156 § 126; RRS § 1496; prior: Code 1881 § 1494; 1854 p 285 § 104.]

Priority of sale as between realty and personalty: RCW 11.56.015.

11.56.060 Public sales—Notice. When real property is directed to be sold by public sale, notice of the time and place of such sale shall be published in a legal newspaper of the county in which the estate is being administered, once each week for three successive weeks before such sale, in which notices the property ordered

sold shall be described with proper certainty: *Provided*, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. At the time and place named in such notices for the said sale, the personal representative shall proceed to sell the property upon the terms and conditions ordered by the court, and to the highest and best bidder. All sales of real estate at public sale shall be made at the front door of the court house of the county in which the lands are, unless the court shall by order otherwise direct. [1965 c 145 § 11.56.060. Prior: 1917 c 156 § 127; RRS § 1497; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

11.56.070 Postponement, adjournment of sale—
Notice. The personal representative, should he deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the personal representative at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the personal representative to cause a notice of such adjournment to be published in a legal newspaper in the county in which notice was published as provided in RCW 11.56.060, in addition to making such proclamation. [1965 c 145 § 11.56.070. Prior: 1917 c 156 § 128; RRS § 1498; prior: Code 1881 § 1505; 1854 p 287 § 115.]

11.56.080 Private sales of realty—Notice—
Bids. When a sale of real property is ordered to be made at private sale, notice of the same must be published in a legal newspaper of the county in which the estate is being administered, once a week for at least two successive weeks before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty: *Provided*, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. The notice must state the day on or after which the sale will be made and the place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day, but if made, must be made within twelve months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice or delivered to the personal representative personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order. [1965 c 145 §

11.56.080. Prior: 1917 c 156 § 129; RRS § 1499; prior: 1888 p 187 § 1; Code 1881 § 1504; 1854 p 287 § 114.]

11.56.090 Minimum price—Private sale—Sale by negotiation—Reappraisal. No sale of real estate at private sale or sale by negotiation shall be confirmed by the court unless the gross sum offered is at least ninety percent of the appraised value thereof, nor unless such real estate shall have been appraised within one year immediately prior to such sale. If it has not been so appraised, or if the court is satisfied that the appraisal is too high or too low, appraisers may be appointed, and they must make an appraisal thereof in the same manner as in the case of the original appraisal of the estate, and which appraisal may be made at any time before the sale or the confirmation thereof. [1965 c 145 § 11.56.090. Prior: 1917 c 156 § 130; RRS § 1500; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

11.56.100 Confirmation of sale—Approval—Resale. The personal representative making any sale of real estate, either at public or private sale, or sale by negotiation shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. In the case of a sale by negotiation the personal representative shall publish a notice in one issue of a legal newspaper of the county in which the estate is being administered; such notice shall include the legal description of the property sold, the selling price and the date after which the sale can be confirmed: *Provided*, That such confirmation date shall be at least ten days after such notice is published. At any time after the expiration of ten days from the publication of such notice, in the case of sale by negotiation, and at any time after the expiration of ten days from the filing of such return, in the case of public or private sale the court may approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale or sale by negotiation that it did not sell for at least ninety percent of the appraised value as in RCW 11.56.090 provided, and that a sum exceeding said bid by at least ten percent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made. [1965 c 145 § 11.56.100. Prior: 1917 c 156 § 131; RRS § 1501; prior: 1891 c 155 § 31; Code 1881 § 1508; 1854 p 287 § 118.]

11.56.110 Offer of increased bid—Duty of court. If, at any time before confirmation of any such sale, any person shall file with the clerk of the court a bid on such property in an amount not less than ten percent higher than the bid the acceptance of which was reported by the return of sale and shall deposit with the clerk not less than twenty percent of his bid in the form of cash,

money order, cashier's check or certified check made payable to the clerk, to be forfeited to the estate unless such bidder complies with his bid, the bidder whose bid was accepted shall be informed of such increased bid by registered or certified mail addressed to such bidder at any address which may have been given by him at the time of making such bid. Such bidder then shall have a period of five days, not including holidays, in which to make and file a bid better than that of the subsequent bidder. After the expiration of such five-day period the court may refuse to confirm the sale reported in the return of sale and direct a sale to the person making the best bid then on file, indicating which is the best bid, and a sale made pursuant to such direction shall need no further confirmation. Instead of such a direction, the court, upon application of the personal representative, may direct the reception of sealed bids. Thereupon the personal representative shall mail notice by registered or certified mail to all those who have made bids on such property, informing them that sealed bids will be received by the clerk of the court within ten days. At the expiration of such period the personal representative, in the presence of the clerk of the court, shall open such bids as shall have been submitted to the clerk within the time stated in the notice (whether by previous bidders or not) and shall file a recommendation of the acceptance of the bid which he deems best in view of the requirements of the particular estate. The court may thereupon direct a sale to the bidder whose bid is deemed best by the court and a sale made pursuant to such direction shall need no confirmation: *Provided, however*, That the court shall consider the net realization to the estate in determining the best bid. [1967 ex.s. c 106 § 2; 1967 c 168 § 18; 1965 c 145 § 11.56.110. Prior: 1955 c 154 § 1; 1917 c 156 § 132; RRS § 1502.]

Effective date—1967 ex.s. c 106: "The provisions of this act shall take effect on July 1, 1967." [1967 ex.s. c 106 § 5.]

Effective date—1967 c 168: See note following RCW 11.02.070.

11.56.115 Effect of confirmation. No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real estate made after confirmation of sale by the court shall be open to attack upon any grounds whatsoever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and all orders of the court with reference to such sale have been complied with. [1965 c 145 § 11.56.115. Prior: 1917 c 156 § 134; RCW 11.56.130; RRS § 1504; prior: Code 1881 § 1510; 1854 p 287 § 120.]

Real estate sold by executor, etc., limitation of action: RCW 4.16.070.

11.56.120 Conveyance after confirmation of sale. Upon the confirmation of any such sale the court shall direct the personal representative to make, execute and deliver instruments conveying the title to the person to whom such property may be sold, and such instruments of conveyance shall be deemed to convey all the estate,

rights and interests of the testator or intestate at the death of the deceased and any interest acquired by the estate. [1965 c 145 § 11.56.120. Prior: 1917 c 156 § 133; RRS § 1503; prior: Code 1881 § 1510; 1854 p 287 § 120.]

11.56.140 Sale, lease or mortgage of realty to pay legacy. When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with the debts and charges of administration, the personal representative, with the will annexed, may obtain an order to sell, mortgage or lease his real estate for that purpose in the same manner and upon the same terms and conditions as prescribed in this chapter in case of a sale, mortgage or lease for the payments of the debts. [1965 c 145 § 11.56.140. Prior: 1917 c 156 § 135; RRS § 1505; prior: 1895 c 157 § 10; Code 1881 § 1513; 1854 p 288 § 123.]

11.56.150 Appropriation to pay debts and expenses. If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this chapter. [1965 c 145 § 11.56.150. Prior: 1917 c 156 § 136; RRS § 1506; prior: 1891 c 155 § 32; Code 1881 § 1515; 1854 p 288 § 126.]

Rules of court: SPR 98.12W.

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Payment of claims where estate insufficient: RCW 11.76.150.

Priority of sale, etc., as between realty and personalty: RCW 11.56.015.

11.56.160 Liability of devisees and legatees for debts and expenses. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and allowances to the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary to carry into effect the intention of the testator. [1965 c 145 § 11.56.160. Prior: 1917 c 156 § 137; RRS § 1507; prior: Code 1881 § 1517; 1854 p 288 § 127.]

11.56.170 Contribution among devisees and legatees. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute, according to their respective interests, to any devisee or legatee from whom the estate devised to him may be taken for the payments of the debts or expenses; and the court, when distribution is made, shall by decree for that purpose, settle the amount of the several liabilities and decree how much each person shall contribute. [1965 c 145 § 11.56.170. Prior: 1917 c 156 § 138; RRS § 1508; prior: Code 1881 § 1518; 1854 p 289 § 128.]

(1987 Ed.)

11.56.180 Sale of decedent's contract interest in land. If the deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands under such contract may be sold on the application of his personal representative in the same manner as if he died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this title in respect to lands of which he died seized, except as hereinafter provided. [1965 c 145 § 11.56.180. Prior: 1917 c 156 § 139; RRS § 1509; prior: Code 1881 § 1519; 1854 p 289 § 129.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

11.56.210 Assignment of decedent's contract. Upon the confirmation of such sale, the personal representative shall execute to the purchaser an assignment of the contract and deed, which shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living. [1965 c 145 § 11.56.210. Prior: 1917 c 156 § 142; RRS § 1512; prior: Code 1881 § 1522; 1854 p 289 § 132.]

11.56.220 Redemption of decedent's mortgaged estate. If any person die having mortgaged any real or personal estate, and shall not have devised the same, or provided for any redemption thereof by will, the court, upon the application of any person interested, may order the personal representative to redeem the estate out of the assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors. [1965 c 145 § 11.56.220. Prior: 1917 c 156 § 143; RRS § 1513; prior: Code 1881 § 1523; 1854 p 289 § 133.]

11.56.230 Sale or mortgage to effect redemption. If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court. [1965 c 145 § 11.56.230. Prior: 1917 c 156 § 144; RRS § 1514; prior: 1895 c 157 § 11; 1888 p 185 § 1.]

11.56.240 Sale of mortgaged property if redemption inexpedient. If such redemption be not deemed expedient, the court shall order such property to be sold at public or private sale, which sale shall be with the same notice and conducted in the same manner as required in other cases of real estate or personal property provided

for in this title, and shall be sold subject to such mortgage, and the personal representative shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased had in the property, and the purchase money, after paying the expenses of the sale, shall be applied to the residue in due course of administration. [1965 c 145 § 11.56.240. Prior: 1917 c 156 § 145; RRS § 1515; prior: Code 1881 § 1524; 1873 p 296 § 211; 1854 p 290 § 134.]

11.56.250 Sales directed by will. When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any application to the court with reference to such sales or have the same confirmed by the court. [1965 c 145 § 11.56.250. Prior: 1917 c 156 § 146; RRS § 1516; prior: Code 1881 § 1527.]

11.56.265 Broker's fee and closing expenses—Sale, mortgage or lease. In connection with the sale, mortgage or lease of property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith. [1965 c 145 § 11.56.265.]

Allowance of necessary expenses to personal representative: RCW 11.48.050.

11.56.280 Borrowing on general credit of estate—Petition—Notice—Hearing. Whenever it shall appear to the satisfaction of the court that money is needed to pay debts of the estate, expenses of administration, inheritance tax, or estate tax, the court may by order authorize the personal representative to borrow such money, on the general credit of the estate, as appears to the court necessary for the purposes aforesaid. The time for repayment, rate of interest and form of note authorized shall be as specified by the court in its order. The money borrowed pursuant thereto shall be an obligation of the estate repayable with the same priority as unsecured claims filed against the estate. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and tax obligations and such other things as will tend to assist the court in determining the necessity for the borrowing and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition need be given, except to persons who have requested notice under the provisions of RCW 11.28.240; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court

may have brought before it such testimony or information as it may see fit to receive, for the foregoing purpose. The absence of any allegation in the petition shall not deprive the court of jurisdiction to authorize such borrowing. [1965 c 145 § 11.56.280.]

Order of payment of debts: RCW 11.76.110.

Powers of executor under nonintervention will: RCW 11.68.040.

Chapter 11.60

PERFORMANCE OF DECEDENT'S CONTRACTS

Sections

- | | |
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| 11.60.010 | Order for performance on application of personal representative. |
| 11.60.020 | Petition, notice and hearing when personal representative fails to make application. |
| 11.60.030 | Hearing. |
| 11.60.040 | Conveyance of real property—Effect. |
| 11.60.060 | Procedure on death of person entitled to performance. |

Evidence, transaction with person since deceased: RCW 5.60.030.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

Sale or assignment of decedent's contract interest in land: RCW 11.56.180, 11.56.210.

11.60.010 Order for performance on application of personal representative. If any person, who is bound by contract, in writing, shall die before performing said contract, the superior court of the county in which the estate is being administered, may upon application of the personal representative, without notice, make an order authorizing and directing the personal representative to perform such contract. [1965 c 145 § 11.60.010. Prior: 1917 c 156 § 188; RRS § 1558; prior: 1891 p 390 § 40; Code 1881 § 623; 1877 p 130 § 626; 1854 p 292 § 150.]

Guardianship, performance of contracts: RCW 11.92.130.

11.60.020 Petition, notice and hearing when personal representative fails to make application. If the personal representative fails to make such application, then any person claiming to be entitled to such performance under such contract, may present a petition setting forth the facts upon which such claim is predicated. Notice of hearing shall be in accordance with the provisions of *RCW 11.16.081. [1965 c 145 § 11.60.020. Prior: 1917 c 156 § 189; RRS § 1559; prior: 1891 c 155 § 41; Code 1881 § 694; 1877 p 130 § 627; 1854 p 292 § 151.]

**Reviser's note: RCW 11.16.081 was repealed by 1969 c 70 § 5. Actions for recovery of property and on contract: RCW 11.48.090.*

11.60.030 Hearing. At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of service of the notice as provided in *RCW 11.16.081, the court shall proceed to a hearing and determine the matter. [1965 c 145 § 11.60.030. Prior: 1917 c 156 § 190; RRS § 1560; prior: 1891 c 155 § 42; Code 1881 § 625; 1877 p 130 § 628; 1854 p 293 § 152.]

**Reviser's note: RCW 11.16.081 was repealed by 1969 c 70 § 5.*

11.60.040 Conveyance of real property—Effect. In the case of real property, a conveyance executed under the provisions of this title shall so refer to the order authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of such order shall pass to the grantee all the estate, right, title and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and executed the conveyance in pursuance of such contract. [1965 c 145 § 11.60.040. Prior: 1917 c 156 § 191; RRS § 1561; prior: Code 1881 § 626; 1877 p 130 § 629; 1854 p 293 § 153.]

11.60.060 Procedure on death of person entitled to performance. If the person entitled to performance shall die before the commencement of the proceedings according to the provisions of this title or before the completion of performance, any person who would have been entitled to the performance under him, as heir, devisee, or otherwise, in case the performance had been made according to the terms of the contract, or the personal representative of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the performance shall inure to the persons who would have been entitled to it, or to the personal representative for their benefit. [1965 c 145 § 11.60.060. Prior: 1917 c 156 § 193; RRS § 1563; prior: 1891 c 155 § 47; Code 1881 § 532; 1877 p 132 § 635; 1854 p 294 § 159.]

Chapter 11.62

ESTATES UNDER \$10,000—DISPOSITION OF DEBTS, PERSONAL PROPERTY TAXES, ETC., BY AFFIDAVIT

Sections	
11.62.005	Definitions.
11.62.010	Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Inheritance taxes—Securities.
11.62.020	Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability.
11.62.030	Payment to surviving spouse of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative.

Reviser's note: Inheritance and gift taxes were repealed by 1981 2nd ex.s. c 7 § 83.100.160. For provisions relating to estate and transfer taxes, see chapter 83.100 RCW.

11.62.005 Definitions. As used in this chapter, the following terms shall have the meanings indicated.

(1) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.

(2) (a) "Successor" and "successors" shall mean (subject to subsection (2)(b) of this section):

(i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by

virtue of the laws of intestate succession contained in this title; and/or

(ii) The surviving spouse of the decedent to the extent that the surviving spouse is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse and the decedent.

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization.

(4) "Organization" shall include a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. [1977 ex.s. c 234 § 29.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.62.010 Disposition of personal property, debts by affidavit, proof of death—Contents of affidavit—Procedure—Inheritance taxes—Securities. (1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed ten thousand dollars;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten

days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) Upon receipt of notification from the inheritance tax division of the state department of revenue that an inheritance tax report is requested, the holder of any property subject to claim by a successor hereunder shall withhold payment, delivery, transfer or issuance of such property until provided with an inheritance tax release. [1987 c 157 § 1; 1977 ex.s. c 234 § 11; 1974 ex.s. c 117 § 4.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.62.020 Effect of affidavit and proof of death—Discharge and release of transferor—Refusal to pay or deliver—Procedure—False affidavit—Conflicting affidavits—Accountability. The person paying, delivering, transferring, or issuing personal property pursuant to RCW 11.62.010 is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent, unless at the time of such payment, delivery, transfer, or issuance, such person had actual knowledge of the falsity of any statement which is required by RCW 11.62.010(2) as now or hereafter amended to be contained in the successor's affidavit. Such person is not required to see to the application of the personal property, or to inquire into the truth of any matter specified in RCW 11.62.010 (1) or (2) as now or hereafter amended, or into the payment of any inheritance tax liability.

An organization shall not be deemed to have actual knowledge of the falsity of any statement contained in an affidavit made pursuant to RCW 11.62.010(2) as now or hereafter amended until such time as said knowledge shall have been brought to the personal attention of the individual making the transfer, delivery, payment, or issuance of the personal property claimed under RCW 11.62.010 as now or hereafter amended.

If any person to whom an affidavit and proof of death is delivered refuses to pay, deliver, or transfer any personal property, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. If more than one affidavit is delivered with reference to the same personal property, the person to whom an affidavit is delivered may pay, deliver, transfer, or issue any personal property in response to the first affidavit received, provided that proof of death has also been received, or alternately implead such property into court for payment over to the person entitled thereto. Any person to whom payment, delivery, transfer, or issuance of personal property is made pursuant to RCW 11.62.010 as now or hereafter amended is answerable and accountable therefor to any personal representative of the estate of the decedent or to any other person having a superior right thereto. [1977 ex.s. c 234 § 12; 1974 ex.s. c 117 § 5.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.62.030 Payment to surviving spouse of moneys on deposit of deceased credit union member—Limitation—Affidavit—Accounting to personal representative. On the death of any member of any credit union organized under chapter 31.12 RCW or federal law, such credit union may pay to the surviving spouse the moneys of such member on deposit to the credit of said deceased member, including moneys deposited as shares in said credit union, in cases where the amount of deposit does not exceed the sum of one thousand dollars, upon receipt of an affidavit from the surviving spouse to the effect that the member died and no executor or administrator has been appointed for the member's estate, and the member had on deposit in said credit union money not exceeding the sum of one thousand dollars. The payment of such deposit made in good faith to the spouse making the affidavit shall be a full acquittance and release of the credit union for the amount of the deposit so paid.

No probate proceeding shall be necessary to establish the right of said surviving spouse to withdraw said deposits upon the filing of said affidavit: *Provided*, That whenever a personal representative is appointed in an estate where a withdrawal of deposits has been had in compliance with this section, the spouse so withdrawing said deposits shall account for the same to the personal representative. The credit union may also pay out the moneys on deposit to the credit of the deceased upon presentation of an affidavit as provided in RCW 11.62-.010, as now or hereafter amended. [1980 c 41 § 10.]

Severability—1980 c 41: "If any provision of this amendatory 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." [1980 c 41 § 13.]

Chapter 11.64
PARTNERSHIP PROPERTY

Sections

- 11.64.002 Inventory—Appraisalment.
 11.64.008 Surviving partner may continue in possession.
 11.64.016 Security may be required.
 11.64.022 Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt—Receiver.
 11.64.030 Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—Protection against partnership liabilities.
 11.64.040 Surviving partner may operate under agreement with estate—Termination.

Dissolution and winding up of partnership: RCW 25.04.290 through 25.04.430.

Property rights of a partner: RCW 25.04.240 through 25.04.280.

Relations of partners to one another: RCW 25.04.180 through 25.04.230.

Rights of estate of deceased partner when business is continued: RCW 25.04.420.

11.64.002 Inventory—Appraisalment. Within three months after receiving written request from the personal representative the surviving partner or partners of the partnership shall furnish the personal representative with a verified inventory of the assets of the partnership. The inventory shall state the value of the assets as shown by the books of the partnership and list the liabilities of the partnership. At the request of the personal representative, the surviving partner or partners shall permit the assets of the partnership to be appraised, which appraisal shall include the value of the assets of the partnership and a list of the liabilities. [1977 ex.s. c 234 § 13; 1965 c 145 § 11.64.002. Prior: 1951 c 197 § 1; prior: (i) 1917 c 156 § 88; RRS § 1458. (ii) 1917 c 156 § 91; RRS § 1461.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Inventory of estate to identify decedent's share in partnership: RCW 11.44.015(6).

Right to wind up partnership: RCW 25.04.370.

11.64.008 Surviving partner may continue in possession. The surviving partner or partners may continue in possession of the partnership estate, pay its debts, and settle its business, and shall account to the personal representative of the decedent and shall pay over such balances as may, from time to time, be payable to him. [1977 ex.s. c 234 § 14; 1965 c 145 § 11.64.008. Prior: 1951 c 197 § 2.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.016 Security may be required. If the surviving partner or partners commit waste, or if it appears to the court that it is for the best interest of the estate of the decedent, such court may, after a hearing, order the surviving partner or partners to give security for the faithful settlement of the partnership affairs and the payment to the personal representative of any amount due the estate. [1977 ex.s. c 234 § 15; 1965 c 145 § 11.64.016. Prior: 1951 c 197 § 3.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.022 Failure to furnish inventory, list liabilities, permit appraisal, etc.—Show cause—Contempt—Receiver. If the surviving partner or partners fail or refuse to furnish an inventory or list of liabilities, to permit an appraisal, or to account to the personal representative, or to furnish a bond when required pursuant to RCW 11.64.016, said court shall order a citation to issue requiring the surviving partner or partners to appear and show cause why they have not furnished an inventory list of liabilities, or permitted an appraisal or why they should not account to the personal representative or file a bond. The citation shall be served not less than ten days before the return day designated therein, or such shorter period as the court upon a showing of good cause deems appropriate. If the surviving partner or partners neglect or refuse to file an inventory or list of liabilities, or to permit an appraisal, or fail to account to the court or to file a bond, after they have been directed to do so, they may be punished for a contempt or the court may commit them to jail until they comply with the order of the court. Where the surviving partner or partners fail to file a bond after being ordered to do so by the court, the court may also appoint a receiver of the partnership estate with like powers and duties of receivers in equity, and order the costs and expenses of the proceedings to be paid out of the partnership estate or out of the estate of the decedent, or by the surviving partner or partners personally, or partly by each of the parties. [1977 ex.s. c 234 § 16; 1965 c 145 § 11.64.022. Prior: 1951 c 197 § 4.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.030 Surviving partner or partners may purchase deceased's interest—Valuation—Conditions of sale—Protection against partnership liabilities. The surviving partner or the surviving partners jointly, shall have the right at any time to petition the court to purchase the interests of a deceased partner in the partnership. Upon a hearing pursuant to such petition the court shall, in such manner as it sees fit, determine and by order fix the value of the interest of the deceased partner over and above all partnership debts and obligations, the price, terms, and conditions of such sale and the period of time during which the surviving partner or partners shall have the prior right to purchase the interest of the deceased partner. If any such surviving partner be also the personal representative of the estate of the deceased partner, such fact shall not affect his right to purchase, or to join with the other surviving partners to purchase such interest in the manner hereinbefore provided.

The court shall make such orders in connection with such sale as it deems proper or necessary to protect the estate of the deceased against any liability for partnership debts or obligations. [1977 ex.s. c 234 § 17; 1965 c 145 § 11.64.030. Prior: 1951 c 197 § 5; prior: 1917 c 156 § 89; 1859 p 186 §§ 120–130; 1854 p 274 §§ 46–53; RRS § 1459.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

11.64.040 Surviving partner may operate under agreement with estate—Termination. The court may, in instances where it is deemed advisable, authorize and direct the personal representative of the estate of a deceased partner to enter into an agreement with the surviving partner or partners under which the surviving partner or partners may continue to operate any going business of the former partnership until the further order of the court. The court may, in its discretion, revoke such authority and direction and thereby terminate such agreement at any time by further order, entered upon the application of the personal representative or the surviving partner or partners or any interested person or on its own motion. [1965 c 145 § 11.64.040. Prior: 1951 c 197 § 6; prior: 1917 c 156 § 90; 1859 p 186 §§ 120–130; 1854 p 274 §§ 46–53; RRS § 1460.]

Chapter 11.66

SOCIAL SECURITY BENEFITS

Sections

11.66.010 Social security benefits—Payment to survivors or department of social and health services—Effect.

11.66.010 Social security benefits—Payment to survivors or department of social and health services—Effect. (1) If not less than thirty days after the death of an individual entitled at the time of death to a monthly benefit or benefits under Title II of the Social Security Act, all or part of the amount of such benefit or benefits, not in excess of one thousand dollars, is paid by the United States to (a) the surviving spouse, (b) one or more of the deceased's children, or descendants of his deceased children, (c) the secretary of social and health services if the decedent was a resident of a state institution at the date of death and liable for the cost of his care in an amount at least as large as the amount of such benefits, (d) the deceased's father or mother, or (e) the deceased's brother or sister, preference being given in the order named if more than one request for payment shall have been made by or for such individuals, such payment shall be deemed to be a payment to the legal representative of the decedent and shall constitute a full discharge and release from any further claim for such payment to the same extent as if such payment had been made to an executor or administrator of the decedent's estate.

(2) The provisions of subsection (1) hereof shall apply only if an affidavit has been made and filed with the United States Department of Health, Education, and Welfare by the surviving spouse or other relative by whom or on whose behalf request for payment is made and such affidavit shows (a) the date of death of the deceased, (b) the relationship of the affiant to the deceased, (c) that no executor or administrator for the deceased has qualified or been appointed, nor to the affiant's knowledge is administration of the deceased's estate contemplated, and (d) that, to the affiant's

knowledge, there exists at the time of the filing of such affidavit, no relative of a closer degree of kindred to the deceased than the affiant: *Provided*, That the affidavit filed by the secretary of social and health services shall meet the requirements of parts (a) and (c) of this subsection and, in addition, show that the decedent left no known surviving spouse or children and died while a resident of a state institution at the date of death and liable for the cost of his care in an amount at least as large as the amount of such benefits. [1979 c 141 § 12; 1967 c 175 § 2.]

Effective date—1967 c 175: "This 1967 amendatory act shall take effect and be in force on and after the first day of July, 1967, in conformity with the terms and provisions of section 11.99.010, chapter 145, Laws of 1965 and RCW 11.99.010." [1967 c 175 § 3.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Chapter 11.68

SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

Sections

11.68.010 Settlement without court intervention—Solvency—Order of solvency—Notice.

11.68.020 Presumption of nonintervention powers where personal representative named in will.

11.68.030 Nonintervention powers—Order of solvency—Bond.

11.68.040 Application for nonintervention powers—Intestacy or personal representative not named—Notice—Requirements—Hearing on petition.

11.68.050 Objections to granting of nonintervention powers—Restrictions on powers—No objections.

11.68.060 Death, resignation or disablement of personal representative—Successor to administer nonintervention powers.

11.68.070 Procedure when personal representative recant to trust or subject to removal.

11.68.080 Order of solvency—Vacation or restriction.

11.68.090 Powers of personal representative under nonintervention will—Scope—Presumption of necessity.

11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees.

11.68.110 Declaration of completion of probate—Contents—Filing—Form—Notice—Waiver of notice.

11.68.120 Nonintervention powers not deemed waived by obtaining order or decree.

11.68.010 Settlement without court intervention—Solvency—Order of solvency—Notice. Subject to the provisions of this chapter, if the estate of a decedent, who died either testate or intestate, is solvent, and if the personal representative is other than a creditor of the decedent not designated as personal representative in the decedent's will, such estate shall be managed and settled without the intervention of the court; the fact of solvency shall be established by the entry of an order of solvency. An order of solvency may be entered at the time of the appointment of the personal representative or at any time thereafter where it appears to the court by the petition of the personal representative, or the inventory filed, and/or other proof submitted, that the estate of the decedent is solvent, and that notice of the application for an order of solvency has been given to those persons entitled thereto when required by RCW 11.68.040 as

now or hereafter amended. [1977 ex.s. c 234 § 18; 1974 ex.s. c 117 § 13; 1969 c 19 § 1; 1965 c 145 § 11.68.010. Prior: 1955 c 205 § 5; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Distribution of estates to minors: RCW 11.76.095.

Duty of personal representative to notify department of revenue of administration: RCW 82.32.240.

Inventory: RCW 11.44.015.

Notice

of appointment as personal representative: RCW 11.28.237.

of hearing on final report and petition for distribution: RCW 11.76.040.

to creditors: RCW 11.40.010.

Request for special notice in proceedings in probate: RCW 11.28.240.

11.68.020 Presumption of nonintervention powers where personal representative named in will. Unless court supervision of an estate shall be specifically required under the terms and provisions of a will, a decedent shall be deemed to have intended any and all personal representatives named in his will to have the power to administer his estate without the intervention of court, and any personal representative or personal representatives named in the decedent's will shall acquire nonintervention powers without prior notice, upon meeting the requirements of RCW 11.68.010 as now or hereafter amended. [1974 ex.s. c 117 § 14; 1965 c 145 § 11.68.020. Prior: 1955 c 205 § 6; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.030 Nonintervention powers—Order of solvency—Bond. Subject to giving prior notice when required under RCW 11.68.040 as now or hereafter amended and the entry of an order of solvency, the personal representative, other than a decedent's creditor, of an estate of a decedent who died intestate or the personal representative, other than a decedent's creditor, with the will annexed of the estate of a decedent who died testate shall have the power to administer the estate without further intervention of court after the entry of an order of solvency and furnishing bond when required. [1977 ex.s. c 234 § 19; 1974 ex.s. c 117 § 15; 1965 c 145 § 11.68.030. Prior: 1955 c 205 § 7; prior: 1917 c 156 § 92, part; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1462, part.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Revocation of letters—Causes: RCW 11.28.250.

11.68.040 Application for nonintervention powers—Intestacy or personal representative not

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named—Notice—Requirements—Hearing on petition. (1) If the decedent shall have died intestate, or the petitioning personal representative is not named in the will as such, and in either case the petitioner wishes to acquire nonintervention powers, the personal representative shall, after filing the petition for order of solvency, give notice of his intention to apply to the court for nonintervention powers to all heirs, devisees, legatees of the decedent, and all persons who have requested notice under RCW 11.28.240, who have not, in writing, either waived notice of the hearing or consented to the entry of an order of solvency; said notice shall be given at least ten days prior to the date fixed by the personal representative for the hearing on his petition for an order of solvency: *Provided*, That no prior notice of said hearing shall be required when the personal representative is:

(a) The surviving spouse of the decedent and the decedent left no issue of a prior marriage; or

(b) A bank or trust company authorized to do trust business in the state of Washington.

(2) The notice required by this section shall be sent by regular mail and proof of mailing of said notice shall be by affidavit filed in the cause. Said notice shall contain the name of the decedent's estate, the probate cause number, the name and address of the personal representative, and shall state in substance as follows:

(a) The personal representative has petitioned the superior court of _____ county, state of Washington, for the entry of an order of solvency and a hearing on said petition will be held on _____, the _____ day of _____, 19____, at _____ o'clock, _____M.;

(b) The petition for order of solvency has been filed with said court;

(c) Upon the entry of an order of solvency by the court, the personal representative will be entitled to administer and close the decedent's estate without further court intervention or supervision;

(d) Any heir, legatee, devisee, or other person entitled to notice shall have the right to appear at the time of the hearing on the petition for an order of solvency to object to the granting of nonintervention powers to the personal representative.

(3) If no notice is required, or all heirs, legatees, devisees, and other persons entitled to notice have either waived notice of said hearing or consented to the entry of an order of solvency as provided in this section, the court may hear the petition for an order of solvency at any time. [1977 ex.s. c 234 § 20; 1974 ex.s. c 117 § 16; 1965 c 145 § 11.68.040. Prior: 1955 c 205 § 9; prior: 1917 c 156 § 93; 1897 c 98 § 1, part; Code 1881 § 1443, part; 1869 p 298 § 1, part; 1868 p 49 § 2, part; RRS § 1463.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.050 Objections to granting of nonintervention powers—Restrictions on powers—No objections. If at the time set for the hearing upon the petition for the

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entry of an order of solvency, any person entitled to notice under the provisions of RCW 11.68.040 as now or hereafter amended, shall appear and object to the granting of nonintervention powers to the personal representative of the estate, the court shall consider said objections, if any, and the entry of an order of solvency shall be discretionary with the court upon being satisfied by proof as required in RCW 11.68.010 as now or hereafter amended. If an order of solvency is entered, the court may restrict the powers of the personal representative in such manner as the court determines. If no objection is made at the time of the hearing by any person entitled to notice thereof, the court shall enter an order of solvency upon being satisfied by proof as required in RCW 11.68.010 as now or hereafter amended. [1977 ex.s. c 234 § 21; 1974 ex.s. c 117 § 17.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.060 Death, resignation or disablement of personal representative—Successor to administer nonintervention powers. If, after the entry of an order of solvency, any personal representative of the estate of the decedent shall die, resign, or otherwise become disabled from any cause from acting as the nonintervention personal representative, the successor personal representative, other than a creditor of a decedent not designated as a personal representative in the decedent's will, shall administer the estate of the decedent without the intervention of court after notice and hearing as required by RCW 11.68.040 and 11.68.050 as now or hereafter amended, unless at the time of said hearing objections to the granting of nonintervention powers to such successor personal representative shall be made by an heir, legatee, devisee, or other person entitled to notice pursuant to RCW 11.28.240 as now existing or hereafter amended, and unless the court, after hearing said objections shall refuse to grant nonintervention powers to such successor personal representative. If no heir, legatee, devisee, or other person entitled to notice shall appear at the time of the hearing to object to the granting of nonintervention powers to such successor personal representative, the court shall enter an order granting nonintervention powers to the successor personal representative. [1977 ex.s. c 234 § 22; 1974 ex.s. c 117 § 18.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.070 Procedure when personal representative recreant to trust or subject to removal. If any personal representative who has been granted nonintervention powers fails to execute his trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any unpaid creditor of the estate who has filed a claim or any heir, devisee, legatee, or of any person on behalf of any incompetent heir, devisee, or legatee, such petition being

supported by affidavit which makes a prima facie showing of cause for removal or restriction of powers, the court shall cite such personal representative to appear before it, and if, upon hearing of the petition it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, then, in the discretion of the court the powers of the personal representative may be restricted or the personal representative may be removed and a successor appointed. In the event the court shall restrict the powers of the personal representative in any manner, it shall endorse the words "Powers restricted" upon the original order of solvency together with the date of said endorsement, and in all such cases the cost of the citation, hearing, and reasonable attorney's fees may be awarded as the court determines. [1977 ex.s. c 234 § 23; 1974 ex.s. c 117 § 19.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.080 Order of solvency—Vacation or restriction. After such notice as the court may require, the order of solvency shall be vacated or restricted upon the petition of any personal representative, heir, legatee, devisee, or creditor, if supported by proof satisfactory to the court that said estate has become insolvent.

If, after hearing, the court shall vacate or restrict the prior order of solvency, the court shall endorse the term "Vacated" or "Powers restricted" upon the original order of solvency together with the date of said endorsement. [1977 ex.s. c 234 § 24; 1974 ex.s. c 117 § 20.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.090 Powers of personal representative under nonintervention will—Scope—Presumption of necessity. 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 do anything a trustee may do under RCW 11.98.070 and chapters 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. Any party to any such transaction and his or her successors in interest shall be entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate. [1985 c 30 § 7. Prior: 1984 c 149 § 10; 1974 ex.s. c 117 § 21.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.100 Closing of estate—Alternative decrees—Notice—Hearing—Fees. (1) When the estate is ready to be closed, the court, upon application by the personal representative who has nonintervention powers, shall have the authority and it shall be its duty, to make and cause to be entered a decree which either:

(a) Finds and adjudges that all approved claims of the decedent have been paid, finds and adjudges the heirs of the decedent or those persons entitled to take under his will, and distributes the property of the decedent to the persons entitled thereto; or

(b) Approves the accounting of the personal representative and settles the estate of the decedent in the manner provided for in the administration of those estates in which the personal representative has not acquired nonintervention powers.

(2) Either decree provided for in this section shall be made after notice given as provided for in the settlement of estates by a personal representative who has not acquired nonintervention powers. The petition for either decree provided for in this section shall state the fees paid or proposed to be paid to the personal representative, his attorneys, accountants, and appraisers, and any heir, devisee, or legatee whose interest in the assets of a decedent's estate would be reduced by the payment of said fees shall receive a copy of said petition with the notice of hearing thereon; at the request of the personal representative or any said heir, devisee, or legatee, the court shall, at the time of the hearing on either petition, determine the reasonableness of said fees. The court shall take into consideration all criteria forming the basis for the determination of the amount of such fees as contained in the code of professional responsibility; in determining the reasonableness of the fees charged by any personal representative, accountants, and appraisers the court shall take into consideration the criteria forming the basis for the determination of attorney's fees, to the extent applicable, and any other factors which the court determines to be relevant in the determination of the amount of fees to be paid to such personal representative. [1977 ex.s. c 234 § 25; 1974 ex.s. c 117 § 22.]

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.110 Declaration of completion of probate—Contents—Filing—Form—Notice—Waiver of notice. If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68-.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration to that effect, which declaration shall state as follows:

(1) The date of the decedent's death, and the decedent's residence at the time of death, whether or not the decedent died testate or intestate, and if testate, the date of the decedent's last will and testament and the date of the order admitting the will to probate;

(2) That each creditor's claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of state inheritance and federal estate tax due as the result of the decedent's death has been determined, settled, and paid;

(3) The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed;

(4) If the decedent died intestate, the names, addresses (if known), and relationship of each heir of the decedent, together with the distributive share of each heir; and

(5) The amount of fees paid or to be paid to each of the following: (a) Personal representative or representatives, (b) lawyer or lawyers, (c) appraiser or appraisers, and (d) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent petitions the court either for an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be automatically discharged without further order of the court and the representative's powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the equivalent of the entry of a decree of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.

Within five days of the date of the filing of the declaration of completion, the personal representative or the representative's lawyer shall mail a copy of the declaration of completion to each heir, legatee, or devisee of the decedent (who has not waived notice of said filing, in writing, filed in the cause) together with a notice which shall be substantially as follows:

CAPTION NOTICE OF FILING OF
OF DECLARATION OF COMPLETION
CASE OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the ----- day of -----, 19 --; unless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, within thirty days after the date of the filing, the amount of fees paid or to be paid will be deemed reasonable, the acts of the personal representative will be deemed approved, the personal representative will be automatically discharged without further order of the court, and the Declaration

of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW.

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.

Dated this ----- day of -----, 19---

Personal Representative

If all heirs, devisees, and legatees of the decedent waive, in writing, the notice required by this section, the personal representative will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion is filed pursuant to this section, any bond furnished by the personal representative shall be automatically discharged upon the discharge of the personal representative. [1985 c 30 § 8. Prior: 1984 c 149 § 11; 1977 ex.s. c 234 § 26; 1974 ex.s. c 117 § 23.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Effective date, application—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.68.120 Nonintervention powers not deemed waived by obtaining order or decree. A personal representative who has acquired nonintervention powers in accordance with this chapter shall not be deemed to have waived his nonintervention powers by obtaining any order or decree during the course of his administration of the estate. [1974 ex.s. c 117 § 24.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Chapter 11.72

DISTRIBUTION BEFORE SETTLEMENT

Sections

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|-----------|---|
| 11.72.002 | Delivery of specific property to distributee before final decree. |
| 11.72.006 | Decree of partial distribution—Distribution of part of estate. |

11.72.002 Delivery of specific property to distributee before final decree. Upon application of the personal representative, with or without notice as the court may direct, the court may order the personal representative to deliver to any distributee who consents to it, possession of any specific real or personal property to which he is entitled under the terms of the will or by intestacy, provided that other distributees and claimants are not

prejudiced thereby. The court may at any time prior to the decree of final distribution order him to return such property to the personal representative, if it is for the best interests of the estate. The court may require the distributee to give security for such return. [1965 c 145 § 11.72.002.]

11.72.006 Decree of partial distribution—Distribution of part of estate. After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons, as the court may direct. Such distribution shall be as conclusive as a decree of final distribution with respect to the estate distributed except to the extent that other distributees and claimants are deprived of the fair share or amount which they would otherwise receive on final distribution. Before a partial distribution is so decreed, the court may require that security be given for the return of the property so distributed to the extent necessary to satisfy any distributees and claimants who may be prejudiced as aforesaid by the distribution. In the event of a request for a partial distribution asked by a person other than the personal representative of the estate, the costs of such proceedings and a reasonable allowance for attorneys fees shall be assessed against the applicant or applicants for the benefit of the estate. [1965 c 145 § 11.72.006. Formerly RCW 11.72.010 through 11.72.070.]

Chapter 11.76

SETTLEMENT OF ESTATES

Sections

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| 11.76.010 | Report of personal representative—Contents—Interim reports. |
| 11.76.020 | Notice of hearing—Settlement of report. |
| 11.76.030 | Final report and petition for distribution—Contents. |
| 11.76.040 | Time and place of hearing—Notice. |
| 11.76.050 | Hearing on final report—Decree of distribution. |
| 11.76.060 | Continuance to cite in sureties on bond when account incorrect. |
| 11.76.070 | Attorney's fee to contestant of erroneous account or report. |
| 11.76.080 | Representation of incompetent or disabled person by guardian ad litem or limited guardian—Exception. |
| 11.76.090 | Distribution of one thousand dollars or less to minor. |
| 11.76.095 | Distribution of estates to minors. |
| 11.76.100 | Receipts for expenses from personal representative. |
| 11.76.110 | Order of payment of debts. |
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| 11.76.150 | Payment of claims where estate insufficient. |
| 11.76.160 | Liability of personal representative. |
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| 11.76.190 | Procedure on contingent and disputed claims. |
| 11.76.200 | Agent for absentee distributee. |
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| 11.76.220 | Sale of unclaimed estate—Remittance of proceeds to department of revenue. |
| 11.76.230 | Liability of agent. |
| 11.76.240 | Claimant to proceeds of sale. |
| 11.76.243 | Heirs may institute probate proceedings if no claimant appears. |
| 11.76.245 | Procedure when claim made after time limitation. |

11.76.247 When court retains jurisdiction after entry of decree of distribution.

11.76.250 Letters after final settlement.

Destruction of receipts for expenses under probate proceedings: RCW 36.23.065.

Estate and transfer taxes: Chapter 83.100 RCW.

11.76.010 Report of personal representative—Contents—Interim reports. Not less frequently than annually from the date of qualification, unless a final report has theretofore been rendered, the personal representative shall make, verify by his oath, and file with the clerk of the court a report of the affairs of the estate. Such report shall contain a statement of the claims filed and allowed and all those rejected, and if it be necessary to sell, mortgage, lease or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family, he may in such report set out the facts showing such necessity and ask for such sale, mortgage, lease or exchange; such report shall likewise state the amount of property, real and personal, which has come into his hands, and give a detailed statement of all sums collected by him, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him done or which should be done. Such personal representative may at any time, however, make, verify, and file any reports which in his judgment would be proper or which the court may order to be made. [1965 c 145 § 11.76.010. Prior: 1917 c 156 § 159; RRS § 1529; prior: Code 1881 § 1544; 1854 p 296 § 167.]

11.76.020 Notice of hearing—Settlement of report. It shall not be necessary for the personal representative to give any notice of the hearing of any report prior to the final report, except as in RCW 11.28.240 provided, but the court may require notice of the hearing of any such report. [1965 c 145 § 11.76.020. Prior: 1917 c 156 § 160; RRS § 1530.]

11.76.030 Final report and petition for distribution—Contents. When the estate shall be ready to be closed, such personal representative shall make, verify and file with the court his final report and petition for distribution. Such final report and petition shall, among other things, show that the estate is ready to be settled and shall show any moneys collected since the previous report, and any property which may have come into the hands of the personal representative since his previous report, and debts paid, and generally the condition of the estate at that time. It shall likewise set out the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will, and the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate, and shall give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property

and the discharge of the personal representative. If the personal representative has been discharged without having legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective. [1965 c 145 § 11.76.030. Prior: 1917 c 156 § 161; RRS § 1531; prior: 1891 c 155 § 34; Code 1881 § 1556; 1873 p 305 § 251; 1854 p 297 § 178.]

Closure and discharge where obligations and awards equal value of estate: RCW 11.52.050.

Discharge of personal representative for cause: RCW 11.28.160, 11.28.250.

11.76.040 Time and place of hearing—Notice. When such final report and petition for distribution, or either, has been filed, the court, or the clerk of the court, shall fix a day for hearing it which must be at least twenty days subsequent to the day of the publication as hereinafter provided. Notice of the time and place fixed for the hearing shall be given by the personal representative by publishing a notice thereof in a legal newspaper published in the county for one publication at least twenty days preceding the time fixed for the hearing. It shall state in substance that a final report and petition for distribution have, or either thereof has, been filed with the clerk of the court and that the court is asked to settle such report, distribute the property to the heirs or persons entitled thereto, and discharge the personal representative, and it shall give the time and place fixed for the hearing of such final report and petition and shall be signed by the personal representative or the clerk of the court.

Whenever a final report and petition for distribution, or either, shall have been filed in the estate of a decedent and a day fixed for the hearing of the same, the personal representative of such estate shall, not less than twenty days before the hearing, cause to be mailed a copy of the notice of the time and place fixed for hearing to each heir, legatee, devisee and distributee whose name and address are known to him, and proof of such mailing shall be made by affidavit and filed at or before the hearing. [1969 c 70 § 3; 1965 c 145 § 11.76.040. Prior: 1955 c 205 § 13; 1919 c 31 § 1; 1917 c 156 § 162; RRS § 1532. FORMER PART OF SECTION: re Notice of appointment as personal representative, now codified as RCW 11.28.237.]

Request for special notice of proceedings in probate: RCW 11.28.240.

11.76.050 Hearing on final report—Decree of distribution. Upon the date fixed for the hearing of such final report and petition for distribution, or either thereof, or any day to which such hearing may have been adjourned by the court, if the court be satisfied that the notice of the time and place of hearing has been given as provided herein, it may proceed to the hearing aforesaid. Any person interested may file objections to the said report and petition for distribution, or may appear at the time and place fixed for the hearing thereof and present

his objections thereto. The court may take such testimony as to it appears proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the personal representative should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them, and the court shall, if it approves such report, and finds the estate ready to be closed, cause to be entered a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to the same. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the personal representative.

The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. The person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisal, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged in the manner provided by law for the sale or mortgaging of property by personal representatives and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sale thereof made where partition is impracticable except upon a hearing before the court and the court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale; and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

The provisions of this section shall be concurrent with and not in derogation of other statutes as to partition of property or sale. [1965 c 145 § 11.76.050. Prior: 1921 c 93 § 1; 1917 c 156 § 163; RRS § 1533; prior: Code 1881 § 1557; 1854 p 297 § 179.]

Partition: Chapter 7.52 RCW.

11.76.060 Continuance to cite in sureties on bond when account incorrect. If, at any hearing upon any report of any personal representative, it shall appear to the court before which said proceeding is pending that said personal representative has not fully accounted to the beneficiaries of his trust and that said report should not

be approved as rendered, the court may continue said hearing to a day certain and may cite the surety upon the bond of said personal representative to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said personal representative and the surety upon his bond. Said citation shall be personally served upon said surety in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the report of said personal representative shall not be approved and the court shall find that said personal representative is indebted to the beneficiary of his trust in any amount, the court may thereupon enter final judgment against said personal representative and the surety upon his bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [1965 c 145 § 11.76.060. Prior: 1937 c 28 § 1; RRS § 1590-1.]

11.76.070 Attorney's fee to contestant of erroneous account or report. If, in any probate or guardianship proceeding, any personal representative shall fail or neglect to report to the court concerning his trust and any beneficiary or other interested party shall be reasonably required to employ legal counsel to institute legal proceedings to compel an accounting, or if an erroneous account or report shall be rendered by any personal representative and any beneficiary of said trust or other interested party shall be reasonably required to employ legal counsel to resist said account or report as rendered, and upon a hearing an accounting shall be ordered, or the account as rendered shall not be approved, and the said personal representative shall be charged with further liability, the court before which said proceeding is pending may, in its discretion, in addition to statutory costs, enter judgment for reasonable attorney's fees in favor of the person or persons instituting said proceedings and against said personal representative, and in the event that the surety or sureties upon the bond of said personal representative be made a party to said proceeding, then jointly against said surety and said personal representative, which judgment shall be enforced in the same manner and to the same extent as judgments in ordinary civil actions. [1965 c 145 § 11.76.070. Prior: 1937 c 28 § 2; RRS § 1590-2.]

Rules of court: SPR 98.12W.

11.76.080 Representation of incompetent or disabled person by guardian ad litem or limited guardian—Exception. If there be any alleged incompetent or disabled person as defined in RCW 11.88.010 interested in the estate who has no legally appointed guardian or limited guardian, the court:

(1) At any stage of the proceeding in its discretion and for such purpose or purposes as it shall indicate, may, and

(2) For hearings held pursuant to RCW 11.52.010, 11.52.020, 11.68.040 and 11.76.050, each as now or hereafter amended, or for entry of an order adjudicating testacy or intestacy and heirship when no personal representative is appointed to administer the estate of the decedent, shall appoint some disinterested person as guardian ad litem to represent such allegedly incompetent or disabled person with reference to any petition, proceeding report, or adjudication of testacy or intestacy without the appointment of a personal representative to administer the estate of decedent in which the alleged incompetent or disabled person may have an interest, who, on behalf of the alleged incompetent or disabled person, may contest the same as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his services: *Provided, however,* That where a surviving spouse is the sole beneficiary under the terms of a will, the court may grant a motion by the personal representative to waive the appointment of a guardian ad litem for a person who is the minor child of such surviving spouse and the decedent and who is incompetent solely for the reason of his being under eighteen years of age. [1977 ex.s. c 80 § 15; 1974 ex.s. c 117 § 45; 1971 c 28 § 1; 1969 c 70 § 4; 1965 c 145 § 11.76.080. Prior: 1917 c 156 § 164; RRS § 1534; prior: Code 1881 § 1558; 1854 p 297 § 180.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

"Incompetent" defined: RCW 11.88.010.

11.76.090 Distribution of one thousand dollars or less to minor. When a decree of distribution is made by the court in administration upon a decedent's estate and distribution is ordered to a person under the age of eighteen years, of a sum of one thousand dollars or less, the court, in such order of distribution, shall order the same paid, for the use and as the property of said minor, to the person named in said order of distribution to receive the same, without requiring bond or appointment of any guardian. [1974 ex.s. c 117 § 11; 1971 c 28 § 2; 1965 c 145 § 11.76.090. Prior: 1941 c 206 § 2; Rem. Supp. 1941 § 1534-1.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.76.095 Distribution of estates to minors. When a decree of distribution is made by the court in administration upon a decedent's estate or when distribution is made by a personal representative under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of eighteen years, the court shall require either that

(1) the money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the

age of eighteen years and furnishing proof thereof satisfactory to the depository, or

(2) a general guardian shall be appointed and qualify and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding.

This section shall not bar distribution under RCW 11.76.090 as now or hereafter amended. [1974 ex.s. c 117 § 12; 1971 c 28 § 3; 1965 c 145 § 11.76.095.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.76.100 Receipts for expenses from personal representative. In rendering his accounts or reports the personal representative shall produce receipts or canceled checks for the expenses and charges which he shall have paid, which receipts shall be filed and remain in court until the probate has been completed and the personal representative has been discharged; however, he may be allowed any item of expenditure, not exceeding twenty dollars, for which no receipt is produced, if such item be supported by his own oath, but such allowances without receipts shall not exceed the sum of three hundred dollars in any one estate. [1987 c 363 § 2; 1965 c 145 § 11.76.100. Prior: 1917 c 156 § 170; RRS § 1540; prior: Code 1881 § 1553; 1854 p 297 § 176.]

11.76.110 Order of payment of debts. After payment of costs of administration the debts of the estate shall be paid in the following order:

(1) Funeral expenses in such amount as the court shall order.

(2) Expenses of the last sickness, in such amount as the court shall order.

(3) Wages due for labor performed within sixty days immediately preceding the death of decedent.

(4) Debts having preference by the laws of the United States.

(5) Taxes, or any debts or dues owing to the state.

(6) Judgments rendered against the deceased in his lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority.

(7) All other demands against the estate. [1965 c 145 § 11.76.110. Prior: 1917 c 156 § 171; RRS § 1541; prior: Code 1881 § 1562; 1860 p 213 § 264; 1854 p 298 § 184.]

Borrowing on general credit of estate: RCW 11.56.280.

Claims against estate: Chapter 11.40 RCW.

Sale, etc., of property—Priority as to realty or personalty: RCW 11.56.015.

Tax constitutes debt—Priority of lien: RCW 82.32.240.

Wages, preference on death of employer: RCW 49.56.020.

11.76.120 Limitation on preference to mortgage or judgment. The preference given in RCW 11.76.110 to a mortgage or judgment shall only extend to the proceeds of the property subject to the lien of such mortgage or judgment. [1965 c 145 § 11.76.120. Prior: 1917 c 156 §

172; RRS § 1542; prior: 1897 c 22 § 1; Code 1881 § 1653; 1854 p 298 § 185.]

11.76.130 Expense of monument. Personal representatives of the estate of any deceased person are hereby authorized to expend a reasonable amount out of the estate of the decedent to erect a monument or tombstone suitable to mark the grave or crypt of the said decedent, and the expense thereof shall be paid as the funeral expenses are paid. [1965 c 145 § 11.76.130. Prior: 1917 c 156 § 175; RRS § 1545; prior: Code 1881 § 1555; 1875 p 127 § 1.]

11.76.150 Payment of claims where estate insufficient. If the estate shall be insufficient to pay the debts of any class, each creditor shall be paid in proportion to his claim, and no other creditor of any lower class shall receive any payment until all those of the preceding class shall have been fully paid. [1965 c 145 § 11.76.150. Prior: 1917 c 156 § 174; RRS § 1544; prior: Code 1881 § 1564; 1854 p 298 § 186.]

Appropriation to pay debts and expenses: RCW 11.56.150.

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Priority of sale, etc. as between realty and personalty: RCW 11.56.015.

11.76.160 Liability of personal representative. Whenever a decree shall have been made by the court for the payment of creditors, the personal representative shall be personally liable to each creditor for his claim or the dividend thereon, except when his inability to make the payment thereof from the property of the estate shall result without fault upon his part. The personal representative shall likewise be liable on his bond to each creditor. [1965 c 145 § 11.76.160. Prior: 1917 c 156 § 176; RRS § 1546; prior: 1891 c 155 § 35; Code 1881 § 1568; 1854 p 299 § 190.]

11.76.170 Action on claim not acted on—Contribution. If, after the accounts of the personal representative have been settled and the property distributed, it shall appear that there is a creditor or creditors whose claim or claims have been duly filed and not paid or disallowed, the said claim or claims shall not be a lien upon any of the property distributed, but the said creditor or creditors shall have a cause of action against the personal representative and his bond, for such an amount as such creditor or creditors would have been entitled to receive had the said claim been duly allowed and paid, and shall also have a cause of action against the distributees and creditors for a contribution from them in proportion to the amount which they have received. If the personal representative or his sureties be required to make any payment in this section provided for, he or they shall have a right of action against said distributees and creditors to compel them to contribute their just share. [1965 c 145 § 11.76.170. Prior: 1917 c 156 § 177; RRS § 1547; prior: Code 1881 § 1569; 1860 p 214 § 271; 1854 p 299 § 191.]

11.76.180 Order maturing claim not due. If there be any claim not due the court may in its discretion, after hearing upon such notice as may be determined by it, mature such claim and direct that the same be paid in the due course of the administration. [1965 c 145 § 11.76.180. Prior: 1917 c 156 § 178; RRS § 1548; prior: Code 1881 § 1567; 1854 p 298 § 189.]

11.76.190 Procedure on contingent and disputed claims. If there be any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to, if the claim were established or absolute, shall be paid into the court, where it shall remain to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require. [1965 c 145 § 11.76.190. Prior: 1917 c 156 § 179; RRS § 1549; prior: Code 1881 § 1567; 1854 p 298 § 189.]

11.76.200 Agent for absentee distributee. When any estate has been or is about to be distributed by decree of the court as provided in this chapter, to any person who has not been located, the court shall appoint an agent for the purpose of representing the interests of such person and of taking possession and charge of said estate for the benefit of such absentee person: *Provided*, That no public official may be appointed as agent under this section. [1965 c 145 § 11.76.200. Prior: 1955 ex.s. c 7 § 1; 1917 c 156 § 165; RRS § 1535.]

11.76.210 Agent's bond. Such agent shall make, subscribe and file an oath for the faithful performance of his duties, and shall give a bond to the state, to be approved by the court, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive any property of said estate. [1965 c 145 § 11.76.210. Prior: 1955 ex.s. c 7 § 2; 1917 c 156 § 166; RRS § 1536.]

11.76.220 Sale of unclaimed estate—Remittance of proceeds to department of revenue. If the estate remains in the hands of the agent unclaimed for three years, any property not in the form of cash shall be sold under order of the court, and all funds, after deducting a reasonable sum for expenses and services of the agent, to be fixed by the court, shall be paid into the county treasury. The county treasurer shall issue triplicate receipts therefor, one of which shall be filed with the county auditor, one with the court, and one with the department of revenue. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the county treasurer shall forthwith remit them to the department of revenue for deposit in the state treasury in the fund in which escheats and forfeitures are by law required to be deposited. [1975 1st ex.s. c 278 § 10; 1965 c 145 § 11.76.220. Prior: 1955 ex.s. c 7 § 4; 1917 c 156 § 167; RRS § 1537.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Escheats: Chapter 11.08 RCW.

11.76.230 Liability of agent. The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the funds to the county treasury, and may be sued thereon by any person interested including the state. [1965 c 145 § 11.76.230. Prior: 1955 ex.s. c 7 § 5; 1917 c 156 § 168; RRS § 1538.]

11.76.240 Claimant to proceeds of sale. During the time the estate is held by the agent, or within four years after it is delivered to the county treasury, claim may be made thereto only by the absentee person or his legal representative, excepting that if it clearly appears that such person died prior to the decedent in whose estate distribution was made to him, but leaving lineal descendants surviving, such lineal descendants may claim. If any claim to the estate is made during the period specified above, the claimant shall forthwith notify the department of revenue in writing of such claim. The court, being first satisfied as to the right of such person to the estate, and after the filing of a clearance from the department of revenue, shall order the agent, or the county treasurer, as the case may be, to forthwith deliver the estate, or the proceeds thereof, if sold, to such person. [1975 1st ex.s. c 278 § 11; 1965 c 145 § 11.76.240. Prior: 1955 ex.s. c 7 § 6; 1917 c 156 § 169; RRS § 1539.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.76.243 Heirs may institute probate proceedings if no claimant appears. If no person appears to claim the estate within four years after it is delivered to the county treasury, as provided by RCW 11.76.240, any heirs of the absentee person may institute probate proceedings on the estate of such absentee within ninety days thereafter. The fact that no claim has been made to the estate by the absentee person during the specified time shall be deemed prima facie proof of the death of such person for the purpose of issuing letters of administration in his estate. In the event letters of administration are issued within the period provided above, the county treasurer shall make payment of the funds held by him to the administrator upon being furnished a certified copy of the letters of administration. [1965 c 145 § 11.76.243. Prior: 1955 ex.s. c 7 § 7.]

11.76.245 Procedure when claim made after time limitation. After any time limitation prescribed in RCW 11.76.220, 11.76.240 or 11.76.243, the absentee claimant may, at any time, if the assets of the estate have not been claimed under the provisions of RCW 11.76.240 and 11.76.243, notify the department of revenue of his claim to the estate, and file in the court which had jurisdiction of the original probate a petition claiming the assets of the estate. The department of revenue may appear in answer to such petition. Upon proof being made to the probate court that the claimant is entitled to the estate assets, the court shall render its judgment to that effect and the assets shall be paid to the claimant without interest, upon appropriation made by the legislature.

[1975 1st ex.s. c 278 § 12; 1965 c 145 § 11.76.245. Prior: 1955 ex.s. c 7 § 8.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

11.76.247 When court retains jurisdiction after entry of decree of distribution. After the entry of the decree of distribution in the probate proceedings the court shall retain jurisdiction for the purpose of carrying out the provisions of RCW 11.76.200, 11.76.210, 11.76.220, 11.76.230, 11.76.240, 11.76.243 and 11.76.245. [1965 c 145 § 11.76.247. Prior: 1955 ex.s. c 7 § 3.]

11.76.250 Letters after final settlement. A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued. [1965 c 145 § 11.76.250. Prior: 1917 c 156 § 180; RRS § 1550; prior: Code 1881 § 1603; 1854 p 304 § 224.]

Chapter 11.80 ESTATES OF ABSENTEES

Sections

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Unknown heirs, etc.—Pleading, etc.: RCW 4.28.140 through 4.28.160; *Rules of court:* CR 10.

Written finding of presumed death, missing in action, etc.: RCW 5.40.020 through 5.40.040.

11.80.010 Petition—Notice—Hearing—Appointment of trustee. Whenever it shall be made to appear by petition to any judge of the superior court of any county that there is property in such county, either real or personal, that requires care and attention, or is in such a condition that it is a menace to the public health, safety or welfare, or that the custodian of such property appointed by the owner thereof is either unable or unwilling to continue longer in the care and custody thereof, and that the owner of such property has absented himself from the county and that his whereabouts is unknown and cannot with reasonable diligence be ascertained, or that the absentee owner is a person defined

in RCW 11.80.120, which petition shall state the name of the absent owner, his approximate age, his last known place of residence, the circumstances under which he left and the place to which he was going, if known, his business or occupation and his physical appearance and habits so far as known, the judge to whom such petition is presented shall set a time for hearing such petition not less than six weeks from the date of filing, and shall by order direct that a notice of such hearing be published for three successive weeks in a legal newspaper published in the county where such petition is filed and in such other counties and states as will in the judgment of the court be most likely to come to the attention of the absentee or of persons who may know his whereabouts, which notice shall state the object of the petition and the date of hearing, and set forth such facts and circumstances as in the judgment of the court will aid in identifying the absentee, and shall contain a request that all persons having knowledge concerning the absentee shall advise the court of the facts: *Provided, however,* That the court may, upon the filing of said petition, appoint a temporary trustee, who shall have the powers, duties and qualifications of a special administrator.

If it shall appear at such hearing that the whereabouts of the absentee is unknown, but there is reason to believe that upon further investigation and inquiry he may be found, the judge may continue the hearing and order such inquiry and advertisement as will in his discretion be liable to disclose the whereabouts of the absentee, but when it shall appear to the judge at such hearing or any adjournment thereof that the whereabouts of the absentee cannot be ascertained, he shall appoint a suitable person resident of the county as trustee of such property, taking into consideration the character of the property and the fitness of such trustee to care for the same, preferring in such appointment the husband or wife of the absentee to his presumptive heirs, the presumptive heirs to kin more remote, the kin to strangers, and creditors to those who are not otherwise interested, provided they are fit persons to have the care and custody of the particular property in question and will accept the appointment and qualify as hereinafter provided. [1972 ex.s. c 83 § 1; 1965 c 145 § 11.80.010. Prior: 1915 c 39 § 1; RRS § 1715-1.]

Special administrators: Chapter 11.32 RCW.

11.80.020 Inventory and appraisal—Bond of trustee. The trustee so appointed shall make, subscribe and file in the office of the clerk of the court an oath for the faithful performance of his duties, and shall, within such time as may be fixed by the judge, prepare and file an inventory of such property, and the judge shall thereupon appoint a disinterested and qualified person to appraise such property, and report his appraisal to the court within such time as the court may fix. Upon the coming in of the inventory and appraisal, the judge shall fix the amount of the bond to be given by the trustee, which bond shall in no case be less than the appraised value of the personal property and the annual rents and profits of the real property, and the trustee shall thereupon file with the clerk of the court a good

and sufficient bond in the amount fixed and with surety to be approved by the court, conditioned for the faithful performance of his duties as trustee, and for accounting for such property, its rents, issues, profits, and increase. [1967 c 168 § 15; 1965 c 145 § 11.80.020. Prior: 1915 c 39 § 2; RRS § 1715-2.]

11.80.030 Reports of trustee. The trustee shall, at the expiration of one year from the date of his appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his trusteeship, setting forth specifically the amounts received and expended and the conditions of the property. [1965 c 145 § 11.80.030. Prior: 1915 c 39 § 3; RRS § 1715-3.]

11.80.040 Sale of property—Application of proceeds and income. If necessary to pay debts against the absentee which have been duly approved and allowed in the same form and manner as provided for the approving and allowing of claims against the estate of a deceased person or for such other purpose as the court may deem proper for the preservation of the estate, the trustee may sell, lease or mortgage real or personal property of the estate under order of the court so to do, which order shall specify the particular property affected and the method, whether by public sale, private sale or by negotiation, and the terms thereof, and the trustee shall hold the proceeds of such sale, after deducting the necessary expenses thereof, subject to the order of the court. The trustee is authorized and empowered to, by order of the court, expend the proceeds received from the sale of such property, and also the rents, issues and profits accruing therefrom in the care, maintenance and upkeep of the property, so long as the trusteeship shall continue, and the trustee shall receive out of such property such compensation for his services and those of his attorney as may be fixed by the court. The notices and procedures in conducting sales, leases and mortgages hereunder shall be as provided in chapter 11.56 RCW. [1965 c 145 § 11.80.040. Prior: 1915 c 39 § 4; RRS § 1715-4.]

Rules of court: SPR 98.12W.

11.80.050 Allowance for support of dependents—Sale of property. Whenever a petition is filed in said estate from which it appears to the satisfaction of the court that the owner of such property left a husband or wife, child or children, dependent upon such absentee for support or upon the property in the estate of such absentee, either in whole or in part, the court shall hold a hearing on said petition, after such notice as the court may direct, and upon such hearing shall enter such order as it deems advisable and may order an allowance to be paid out of any of the property of such estate, either community or separate, as the court shall deem reasonable and necessary for the support and maintenance of such dependent or dependents, pending the return of the absentee, or until such time as the property of said estate may be provisionally distributed to the presumptive heirs or to the devisees and legatees. Such allowance shall be paid by the trustee to such persons and in such

manner and at such periods of time as the court may direct. For the purpose of carrying out the provisions of this section the court may direct the sale of any of the property of the estate, either real or personal, in accordance with the provisions of RCW 11.80.040. [1965 c 145 § 11.80.050. Prior: 1925 ex.s. c 80 § 1; RRS § 1715-4a.]

11.80.055 Continuation of absentee's business—Performance of absentee's contracts. Upon a showing of advantage to the estate of the absentee, the court may authorize the trustee to continue any business of the absentee in accordance with the provisions of RCW 11.48-.025. The trustee may also obtain an order allowing the performance of the absentee's contracts in accordance with the provisions of chapter 11.60 RCW. [1965 c 145 § 11.80.055.]

11.80.060 Removal or resignation of trustee—Final account. The court shall have the power to remove or to accept the resignation of such trustee and appoint another in his stead. At the termination of his trust, as hereinafter provided or in case of his resignation or removal, the trustee shall file a final account, which account shall be settled in the manner provided by law for settling the final accounts of personal representatives. [1965 c 145 § 11.80.060. Prior: 1915 c 39 § 5; RRS § 1715-5.]

11.80.070 Period of trusteeship. Such trusteeship shall continue until such time as the owner of such property shall return or shall appoint a duly authorized agent or attorney in fact to care for such property, or until such time as the property shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees of the absentee as hereinafter provided, or until such time as the property shall escheat to the state as hereinafter provided. [1965 c 145 § 11.80.070. Prior: 1915 c 39 § 6; RRS § 1715-6.]

11.80.080 Provisional distribution—Notice of hearing—Will. Whenever the owner of such property shall have been absent from the county for the space of five years and his whereabouts are unknown and cannot with reasonable diligence be ascertained, his presumptive heirs at law may apply to the court for an order of provisional distribution of such property, and to be let into provisional possession thereof: *Provided*, That such provisional distribution may be made at any time prior to the expiration of five years, when it shall be made to appear to the satisfaction of the court that there are strong presumptions that the absentee is dead; and in determining the question of presumptive death, the court shall take into consideration the habits of the absentee, the motives of and the circumstances surrounding the absence, and the reasons which may have prevented the absentee from being heard of.

Notice of hearing upon application for provisional distribution shall be published in like manner as notices for the appointment of trustees are published.

If the absentee left a will in the possession of any person such person shall present such will at the time of

hearing of the application for provisional distribution and if it shall be made to appear to the court that the absentee has left a will and the person in possession thereof shall fail to present it, a citation shall issue requiring him so to do, and such will shall be opened, read, proven, filed and recorded in the case, as are the wills of decedents. [1965 c 145 § 11.80.080. Prior: 1915 c 39 § 7; RRS § 1715-7.]

Notice for appointment of trustees: RCW 11.80.010.

11.80.090 Hearing—Distribution—Bond of distributees. If it shall appear to the satisfaction of the court upon the hearing of the application for provisional distribution that the absentee has been absent and his whereabouts unknown for the space of five years, or there are strong presumptions that he is dead, the court shall enter an order directing that the property in the hands of the trustee shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees under the will, as the case may be, upon condition that such heirs, devisees and legatees respectively give and file in the court bonds with good and sufficient surety to be approved by the court, conditioned for the return of or accounting for the property provisionally distributed in case the absentee shall return and demand the same, which bonds shall be respectively in twice the amount of the value of the personal property distributed, and in ten times the amount of estimated annual rents, issues and profits of any real property so provisionally distributed. [1965 c 145 § 11.80.090. Prior: 1915 c 39 § 8; RRS § 1715-8.]

11.80.100 Final distribution—Notice of hearing—Decree. Whenever the owner of such property shall have been absent from the county for a space of seven years and his whereabouts are unknown and cannot with reasonable diligence be ascertained, his presumptive heirs at law or the legatees and devisees under the will, as the case may be, to whom the property has been provisionally distributed, may apply to the court for a decree of final distribution of such property and satisfaction, discharge and exoneration of the bonds given upon provisional distribution. Notice of hearing of such application shall be given in the same manner as notice of hearing of application for the appointment of trustee and for provisional distribution and if at the final hearing it shall appear to the satisfaction of the court that the owner of the property has been absent and unheard of for the space of seven years and his whereabouts are unknown, the court shall exonerate the bonds given on provisional distribution and enter a decree of final distribution, distributing the property to the presumptive heirs at law of the absentee or to his devisees and legatees, as the case may be. [1965 c 145 § 11.80.100. Prior: 1915 c 39 § 9; RRS § 1715-9.]

11.80.110 Escheat for want of presumptive heirs. Whenever the owner of such property for which a trustee has been appointed under the provisions of this chapter shall have been absent and unheard of for a period of seven years and no presumptive heirs at law have

appeared and applied for the provisional distribution of such property and no will of the absentee has been presented and proven, the trustee appointed under the provisions of the chapter shall apply to the court for a final settlement of his account and upon the settlement of such final account the property of the absentee shall be escheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs. [1965 c 145 § 11.80.110. Prior: 1915 c 39 § 10; RRS § 1715-10.]

Escheats: Chapter 11.08 RCW.
Uniform unclaimed property act: Chapter 63.29 RCW.

11.80.120 Armed forces, etc., personnel missing in action, interned or captured construed as "absentee". Any person serving in or with the armed forces of the United States, in or with the Red Cross, or in or with the merchant marine or otherwise, during any period of time when a state of hostilities exists between the United States and any other power and for one year thereafter, who has been reported or listed as missing in action, or interned in a neutral country, or captured by the enemy, shall be an "absentee" within the meaning of this chapter. [1972 ex.s. c 83 § 2.]

11.80.130 Summary procedure without full trustee proceeding—When permitted—Application for order—Form. (1) If the spouse of any absentee owner, or his next of kin, if said absentee has no spouse, shall wish to sell or transfer any property of the absentee which has a gross value of less than five thousand dollars, or shall require the consent of the absentee in any matter regarding the absentee's children, or any other matter in which the gross value of the subject matter is less than five thousand dollars, such spouse or next of kin may apply to the superior court for an order authorizing said sale, transfer, or consent without opening a full trustee proceeding as provided in this chapter. The applicant may make the application without the assistance of an attorney. Said application shall be made by petition on the following form, which form shall be made readily available to the applicant by the clerk of the superior court.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

Form structure with fields for Plaintiff, Defendant, and No. PETITION FOR SUMMARY RELIEF

Petitioner, _____, whose residence is _____, and _____, Washington, and who is the _____ of the absentee, _____, states that the absentee has been _____ since _____, when _____ Petitioner desires to sell/transfer _____ of the value of _____, because

----- The terms of the sale/transfer are
----- Petitioner requires the consent of the
absentee for the purpose of -----

Petitioner

(Affidavit of Acknowledgment)

(2) The court may, without notice, enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interests of the absentee or his dependents.

(3) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to make a conveyance or transfer of the property or to give the absentee's consent in any manner described by subsection (1) of this section. [1972 ex.s. c 83 § 3.]

Chapter 11.84

INHERITANCE RIGHTS OF SLAYERS

Sections

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11.84.010 Definitions. As used in this chapter:

(1) "Slayer" shall mean any person who participates, either as a principal or an accessory before the fact, in the wilful and unlawful killing of any other person.

(2) "Decedent" shall mean any person whose life is so taken.

(3) "Property" shall include any real and personal property and any right or interest therein. [1965 c 145 § 11.84.010. Prior: 1955 c 141 § 1.]

11.84.020 Slayer not to benefit from death. No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following. [1965 c 145 § 11.84.020. Prior: 1955 c 141 § 2.]

11.84.030 Slayer deemed to predecease decedent. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement

made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]

11.84.040 Distribution of decedent's property. Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent. [1965 c 145 § 11.84.040. Prior: 1955 c 141 § 4.]

11.84.050 Distribution of property held jointly with slayer. (1) One-half of any property held by the slayer and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(2) As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other. [1965 c 145 § 11.84.050. Prior: 1955 c 141 § 5.]

11.84.060 Reversions and vested remainders. Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period. [1965 c 145 § 11.84.060. Prior: 1955 c 141 § 6.]

11.84.070 Property subject to divestment, etc. Any interest in property whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter. [1965 c 145 § 11.84.070. Prior: 1955 c 141 § 7.]

11.84.080 Contingent remainders and future interests. As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent;

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent. [1965 c 145 § 11.84.080. Prior: 1955 c 141 § 8.]

11.84.090 Property appointed—Powers of revocation or appointment. (1) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer. [1965 c 145 § 11.84.090. Prior: 1955 c 141 § 9.]

11.84.100 Insurance proceeds. (1) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or his estate as secondary beneficiary to him and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as secondary beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living. [1965 c 145 § 11.84.100. Prior: 1955 c 141 § 10.]

11.84.110 Payment by insurance company, bank, etc.—No additional liability. Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer. [1965 c 145 § 11.84.110. Prior: 1955 c 141 § 11.]

11.84.120 Rights of persons without notice dealing with slayer. The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has

agreed to purchase, from the slayer for value and without notice property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this chapter, and the slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds. [1965 c 145 § 11.84.120. Prior: 1955 c 141 § 12.]

11.84.130 Record of conviction as evidence against claimant of property. The record of his conviction of having participated in the wilful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter. [1965 c 145 § 11.84.130. Prior: 1955 c 141 § 13.]

Evidence, proof of public documents: Chapter 5.44 RCW; Rules of court: CR 44.

11.84.900 Chapter not to be construed as penal. This chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed. [1965 c 145 § 11.84.900. Prior: 1955 c 141 § 14.]

Chapter 11.86

DISCLAIMER OF INTERESTS

Sections

11.86.010	Definitions.
11.86.020	Disclaimer of interest authorized.
11.86.030	Times for filing.
11.86.040	Effective date—Filing—Recording—Notice.
11.86.050	Disposition of disclaimed interest.
11.86.060	When right to disclaim barred.
11.86.070	Spendthrift or similar restriction, effect—Effect of filing disclaimer or waiver.
11.86.075	Disclaimer more than nine months after death of transferor—Effect on inheritance tax.
11.86.080	Rights under other statutes or rules not abridged.
11.86.090	Interests existing on effective date of chapter.

11.86.010 Definitions. As used in this section, unless otherwise clearly required by the context:

(1) "Beneficiary" means and includes any person entitled, but for his disclaimer, to take an interest: By intestate succession, devise, legacy, or bequest; by succession to a disclaimed interest by will, trust instrument, intestate succession, or through the exercise or nonexercise of a testamentary or other power of appointment; by virtue of a renunciation and election to take against a will; as beneficiary of a testamentary or other written trust or life insurance policy; pursuant to the exercise or nonexercise of a testamentary or other power of appointment; as donee of a power of appointment created by testamentary or trust instrument;

otherwise under a trust, testamentary or nontestamentary instrument or contract or community property agreement; or by right of survivorship.

(2) "Interest" means and includes the whole of any property, real or personal, legal or equitable, or any fractional part, share or particular portion or specific assets thereof, or any estate in any such property, or power to appoint, consume, apply or expend property or any other right, power, privilege or immunity relating thereto.

(3) "Disclaimer" means a written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary, which instrument defines the nature and extent of the interest disclaimed thereby and which must be signed, witnessed and acknowledged by the disclaimant in the manner provided for deeds of real estate, and also a written instrument which exercises a power to invade the corpus or principal of an estate or trust when such exercise has the effect of terminating an interest which could otherwise be succeeded to by a beneficiary. [1979 ex.s. c 209 § 42; 1973 c 148 § 2.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.86.020 Disclaimer of interest authorized. A beneficiary may disclaim any interest in whole or in part, or with reference to specific parts, shares or assets thereof, in the manner provided in RCW 11.86.030 and 11.86.040. A guardian, executor, administrator, attorney in fact under a durable power of attorney under chapter 11.94 RCW, or other personal representative of the estate of a minor, incompetent or deceased beneficiary, if he deems it in the best interests of those interested in the estate of such beneficiary and of those who take the beneficiary's interest by virtue of the disclaimer and not detrimental to the best interests of the beneficiary, with or without an order of the probate court, may disclaim on behalf of the beneficiary within the time and in the manner in which the beneficiary himself could disclaim if he were living, of legal age and competent. A beneficiary likewise may disclaim by agent or attorney so empowered. [1979 ex.s. c 209 § 43; 1973 c 148 § 3.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.86.030 Times for filing. Such disclaimer shall be filed and received as provided in RCW 11.86.040 at any time after the creation of the interest, but in all events by nine months after (1) the beneficiary attains the age of twenty-one, (2) the death of the person by whom the interest was created or from whom it is or, but for the disclaimer would be received, or, (3) if the disclaimant is not finally ascertained as a beneficiary or his interest has not become indefeasibly fixed both in quality and quantity as of the death of such person, then such disclaimer shall be filed and received not later than nine months after the event which causes or, but for the disclaimer, would cause him so to become finally ascertained and his interest to become indefeasibly fixed both in quality

and quantity, whichever occurrence is latest. [1979 ex.s. c 209 § 44; 1973 c 148 § 4.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.86.040 Effective date—Filing—Recording—Notice. Such disclaimer shall be effective upon (1) a copy thereof being filed with the clerk of the court of which the estate of the person by whom the interest was created or from whom it would have been received is, or has been, administered or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of the estate of such person, where it shall be indexed under the name of the decedent in the probate index upon payment of a fee of two dollars; and (2) receipt of the disclaimer by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates, or, if the transferor is dead and there is no legal representative or holder of legal title, by the person having possession of the property. No such representative or person shall be liable for any otherwise proper distribution or other disposition made without actual knowledge of the disclaimer, or in reliance upon the disclaimer and without actual knowledge that said disclaimer is barred as provided in RCW 11.86.060. If an interest in or relating to real estate is disclaimed, the original of the disclaimer, or a copy of the disclaimer certified as true and complete by the clerk of the court wherein the same has been filed, shall be recorded in the office of the auditor in the county or counties where the real estate is situated and shall constitute notice to all persons only from and after the time of such recording. [1979 ex.s. c 209 § 45; 1973 c 148 § 5.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.86.050 Disposition of disclaimed interest. Unless the person by whom the interest was created or from whom it would have been received has otherwise provided by will or other appropriate instrument with reference to the possibility of a disclaimer by the beneficiary, the interest disclaimed shall descend, be distributed or otherwise be disposed of in the same manner as if the disclaimant had died immediately preceding the event giving rise to the commencement of the nine month period under RCW 11.86.030 in which the disclaimer must be filed, and the disclaimer shall relate for all purposes to such date, whether filed before or after such event. However, one disclaiming an interest, including a nonresiduary interest, shall not be precluded, unless his disclaimer so provides, from receiving or enjoying the benefit of the disclaimed interest or any portion of it by virtue of a residuary bequest or devise, or otherwise. An interest of any nature in or to the estate of an intestate may be declined, refused or disclaimed as herein provided without ever vesting in the disclaimant. [1979 ex.s. c 209 § 46; 1973 c 148 § 6.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.86.060 When right to disclaim barred. The right to disclaim otherwise conferred by this chapter shall be barred if the beneficiary is insolvent at the time of the event giving rise to the commencement of the nine month period under RCW 11.86.030 within which the disclaimer must be filed. Any voluntary assignment or transfer of, or contract to assign or transfer, an interest in real or personal property, or written waiver of the right to disclaim the succession to an interest in real or personal property, by any beneficiary, or any sale or other disposition of an interest in real or personal property pursuant to judicial process, made before he has filed a disclaimer, as provided in RCW 11.86.040, bars the right otherwise conferred on such beneficiary to disclaim as to such interest. [1979 ex.s. c 209 § 47; 1973 c 148 § 7.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.86.070 Spendthrift or similar restriction, effect—Effect of filing disclaimer or waiver. The right to disclaim granted by RCW 11.86.020 exists regardless of any limitation imposed on the interest of the disclaimant in the nature of an express or implied spendthrift provision or similar restriction. A disclaimer, when filed and received as provided in RCW 11.86.040, or a written waiver of the right to disclaim, shall be binding upon the disclaimant or beneficiary so waiving and all parties thereafter claiming by, through or under him, except that a beneficiary so waiving may thereafter transfer, assign or release his interest if such is not prohibited by an express or implied spendthrift provision. [1979 ex.s. c 209 § 48; 1973 c 148 § 8.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.86.075 Disclaimer more than nine months after death of transferor—Effect on inheritance tax. If a beneficiary disclaims an interest under this chapter more than nine months after the date of death of the transferor of the interest, there shall be no recalculation of the inheritance tax with respect to the deceased transferor. [1979 ex.s. c 209 § 49.]

Effective date—Applicability—Severability—1979 ex.s. c 209: See notes following RCW 83.04.010.

11.86.080 Rights under other statutes or rules not abridged. This chapter shall not abridge the right of any person, apart from this chapter, under any existing or future statute or rule of law, to disclaim any interest or to assign, convey, release, renounce or otherwise dispose of any interest. [1973 c 148 § 9.]

11.86.090 Interests existing on effective date of chapter. Any interest which exists on June 7, 1973 but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be disclaimed after June 7, 1973 in the manner provided in RCW 11.86.030 and 11.86.040. [1973 c 148 § 10.]

Chapter 11.88

GUARDIANSHIP—APPOINTMENT,
QUALIFICATION, REMOVAL OF GUARDIANS
AND LIMITED GUARDIANS

Sections

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11.88.010	Authority to appoint guardians—Definitions— Venue—Nomination by principal.
11.88.020	Qualifications.
11.88.030	Petition—Contents—Hearing.
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11.88.150	Administration of deceased incompetent's or disabled person's estate.

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distracted persons: RCW 8.20.020.

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Guardian may sue in own name: **Rules of court:** CR 17.

Habeas corpus, granting of writ to guardian: RCW 7.36.020.

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RCW 51.04.070.

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guardian: RCW 73.04.130.

Volunteer firemen's relief, appointment of guardian for fireman: RCW
41.24.140.

Washington uniform gifts to minors act: Chapter 11.93 RCW.

Witness, guardian as: RCW 5.60.030.

11.88.005 Legislative intent and purpose. It is the intent and purpose of the legislature to recognize that disabled persons have special and unique abilities and competencies with varying degrees of disability.

Such persons must be legally protected without the necessity for determination of total incompetency and without the attendant deprivation of civil and legal rights that such a determination requires. [1977 ex.s. c 309 § 1; 1975 1st ex.s. c 95 § 1.]

Severability—1977 ex.s. c 309: "If any provision of this 1977 amendatory 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." [1977 ex.s. c 309 § 18.]

11.88.010 Authority to appoint guardians—Definitions—Venue—Nomination by principal. (1) The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of incompetent persons, and guardians for the estates of all such persons who are nonresidents of the state but who have property in such county needing care and attention.

An "incompetent" is any person who is either:

(a) Under the age of majority, as defined in RCW 11.92.010, or

(b) Incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his property or caring for himself or both.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of disabled persons, who by reason of their disability have need for protection and assistance, but who cannot be found to be fully incompetent, upon investigation as provided by RCW 11.88.090 as now or hereafter amended. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and disabilities on a disabled person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incompetent nor shall a

person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

For the purposes of chapters 11.88 and 11.92 RCW the term "disabled person" means an individual who is in need of protection and assistance by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, but cannot be found to be fully incompetent.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incompetent or disabled person is domiciled, or if such person is a resident of a state institution for developmentally disabled persons, in either the county wherein such institution is located, the county of domicile, or the county wherein a parent of the alleged incompetent or disabled person is domiciled.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. [1984 c 149 § 176; 1977 ex.s. c 309 § 2; 1975 1st ex.s. c 95 § 2; 1965 c 145 § 11.88.010. Prior: 1917 c 156 § 195; RRS § 1565; prior: Code 1881 § 1604; 1873 p 314 § 299; 1855 p 15 § 1.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.020 Qualifications. Any suitable person over the age of eighteen years, or any parent under the age of eighteen years may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incompetent or disabled person; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian or limited guardian of the estate of an incompetent or disabled person; and any nonprofit corporation may act as guardian or limited guardian of the person and/or estate of an incompetent or disabled person if the articles of incorporation or bylaws of such corporation permit such action and such corporation is in compliance with all applicable provisions of Title 24 RCW. No person is qualified to serve as a domiciliary guardian who is

- (1) under eighteen years of age except as otherwise provided herein;
- (2) of unsound mind;
- (3) convicted of a felony or of a misdemeanor involving moral turpitude;
- (4) 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;

(5) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(6) a person whom the court finds unsuitable. [1975 1st ex.s. c 95 § 3; 1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

Banks and trust companies may act as guardian: RCW 11.36.010.

11.88.030 Petition—Contents—Hearing. (1)

Any interested person or entity may file a petition for the appointment of himself or some other qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as now or hereafter amended as the guardian or limited guardian of an incompetent or disabled person. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the incompetent or disabled person;

(b) The nature of his alleged incompetency in accordance with RCW 11.88.010;

(c) The approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian for the person or estate of the alleged incompetent or disabled 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 or marriage to the alleged incompetent or disabled person;

(g) The name and address of the person or institution having the care and custody of the alleged incompetent or disabled 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) The nature and degree of the alleged disability 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;

(j) The requested term of the limited guardianship to be included in the court's order of appointment.

(2) 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 incompetent or disabled person has total assets of a value of less than three thousand dollars.

(3) All petitions filed under the provisions of this section shall be heard within forty-five days unless an extension of time is requested by a party within such forty-five day period and granted for good cause shown. [1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Vulnerable elderly person—*Lack of capacity to consent*—*Guardianship action by department of social and health services*: RCW 74.34.060.

11.88.040 Notice and hearing, when required—**Service**—**Procedure**. Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given personally to the alleged incompetent or disabled person, if over fourteen years of age.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incompetent, disabled person, or minor, if under fourteen years of age;

(2) A parent, if the alleged incompetent or disabled person is a minor, and the spouse of the alleged incompetent or disabled person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incompetent or disabled person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing. If the petition is by a parent asking for his appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition be accompanied by the written consent of a minor of the age of fourteen years or upward, consenting to the appointment of the guardian or limited guardian asked for, or if the petition be by a nonresident guardian of any minor or incompetent or disabled person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incompetent or disabled person shall be present in court at the final hearing on the petition: *Provided*, That this requirement may be waived at the discretion of the court for good cause shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incompetent or disabled person and conduct the final hearing in the presence of the alleged incompetent or disabled person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incompetent or disabled person is waived and the court does not remove itself to the place of residence of such person, the guardian ad

litem shall appear in person at the final hearing on the petition. [1984 c 149 § 177; 1977 ex.s. c 309 § 4; 1975 1st ex.s. c 95 § 5; 1969 c 70 § 1; 1965 c 145 § 11.88.040. Prior: 1927 c 170 § 2; 1923 c 142 § 4; 1917 c 156 § 198; RRS § 1568; prior: 1909 c 118 § 2; 1903 c 130 §§ 2, 3.]

Severability—**Effective dates**—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Waiver of notice: RCW 11.16.083.

11.88.045 Legal counsel and jury trial—**Proof**—**Medical report**. (1) An alleged incompetent or disabled person is entitled to independent legal counsel at his own expense to represent him in the procedure: *Provided*, That if the alleged incompetent or disabled person is unable to pay for such representation or should such payment result in substantial hardship upon such person the county shall be responsible for such costs: *Provided further*, That when, in the opinion of the court, the rights and interests of an alleged or adjudicated incompetent or disabled person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person.

(2) The alleged incompetent or disabled person is further entitled upon request to a jury trial on the issues of his alleged incompetency or disability. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

(3) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a medical report in writing from a physician selected by the guardian ad litem appointed pursuant to RCW 11.88.090 as now or hereafter amended pertaining to the alleged incompetent or disabled persons' degree of incompetency or disability including the medical history if reasonably available, the effects of any current medication on appearance or the ability to participate fully in the proceedings, and a medical prognosis specifying the estimated length and severity of any current disability. [1977 ex.s. c 309 § 5; 1975 1st ex.s. c 95 § 7.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.080 Testamentary guardians. When either parent is deceased, the surviving parent of any minor child may, by his last will in writing appoint a guardian or guardians of the person, or of the estate or both, of his minor child, whether born at the time of making such will or afterwards, to continue during the minority of such child or for any less time, and every such testamentary guardian of the estate of such child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed as aforesaid. [1965 c 145 § 11.88.080. Prior: 1917 c 156 § 210; RRS § 1580; prior: Code 1881 § 1618; 1860 p 228 § 335.]

11.88.090 Guardian ad litem—Appointment—Qualifications—Duties—Report—Fee.

(1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180, as now or hereafter amended, shall affect or impair the power of any court to appoint a guardian to defend the interests of any incompetent or disabled person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

(2) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incompetent or disabled person, who shall be a person found or known by the court to

(a) be free of influence from anyone interested in the result of the proceeding;

(b) have the requisite knowledge, training, or expertise to perform the duties required by this section.

In making this determination the court shall give due consideration to the type of incompetency or disability alleged and to any recommendations made to the court by public or private agencies having appropriate experience or expertise: *Provided*, That no guardian ad litem need be appointed if a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child if the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (3) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incompetent or disabled person and such appointment shall not overcome the presumption of competency or full legal and civil rights of the alleged incompetent or disabled person.

(3) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incompetent or disabled person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his alleged incompetency or disability, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To provide the court with a written report which shall include the following:

(i) A description of the degree of incompetency or disability;

(ii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought;

(iii) In the event the limited guardianship is ordered, its appropriate duration, and the limits and disabilities to be placed on the disabled person; and

(iv) Any expression of approval or disapproval made by the alleged incompetent or disabled person concerning the proposed guardian or limited guardian or guardianship or limited guardianship.

Such report shall also include a recommendation as to whether or not counsel should be appointed to represent the alleged incompetent or disabled person, and the reasons for such recommendation.

The investigation and report shall be made and forwarded to the court, with copies to the alleged incompetent or disabled person, and his attorney, if any has appeared, and to the petitioner, or his attorney within twenty days after appointment, unless an extension of time has been granted by the court for good cause shown;

(c) To arrange for a written medical report pursuant to RCW 11.88.045 as now or hereafter amended.

(4) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem and any other qualified person or organization to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to RCW 11.88.090(3)(b) as now or hereafter amended.

(5) The court appointed guardian ad litem shall have the authority, in the event that the alleged incompetent or disabled person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incompetency or disability pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incompetent or disabled person.

(6) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incompetent or disabled person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: *Provided*, That if no guardian or limited guardian is appointed the court may charge such fee to the petitioner or the alleged incompetent or disabled person, or divide the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public or nonprofit agency. [1977 ex.s. c 309 § 6; 1975 1st ex.s. c 95 § 9; 1965 c 145 § 11.88.090. Prior: 1917 c 156 § 211; RRS § 1581; prior: Code 1881 § 1619; 1873 p 318 § 314; 1860 p 228 § 336.]

Rules of court: Settlement of claims of minors: SPR 98.16W.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Award in lieu of homestead, appointment for minor children or incompetents: RCW 11.52.014.

Costs against guardian of infant plaintiff: RCW 4.84.140.

District judge, guardian ad litem if defendant minor, appointment of: RCW 12.04.150.

Execution against for costs against infant plaintiff: RCW 4.84.140.

Family allowances in probate of property, appointment of guardian ad litem for minor children or incompetents of deceased: Chapter 11.52 RCW.

Homestead, awarding to survivor, guardian ad litem appointed for minor children or incompetents of deceased: RCW 11.52.020.

Insane persons

appearance in civil action: RCW 4.08.060.

appointment for civil actions: RCW 4.08.060.

Liability for costs against infant plaintiffs: RCW 4.84.140.

Minors, for

appearance in civil actions: RCW 4.08.050.

appointment for civil actions: RCW 4.08.050.

district court proceedings: RCW 12.04.150.

Registration of land titles, appointment for minors: RCW 65.12.145.

11.88.100 Oath and bond of guardian or limited guardian. Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited guardianship to the superior court of the county of _____, from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incompetent or disabled person, or his or her property, and render and pay to such incompetent or disabled person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order or adjudge, then this obligation shall be void, otherwise to be and remain in full force and effect.

The bond shall be for the use of the incompetent or disabled person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged incompetent or disabled person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars: *Provided*, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the incompetent or disabled person increasing their value to over

three thousand dollars: *Provided further*, That said guardian or limited guardian shall file a yearly statement showing the monthly income of the incompetent or disabled person if said monthly income, excluding moneys from state or federal benefits, is over the sum of four hundred dollars per month for any three consecutive months. [1983 c 271 § 1; 1977 ex.s. c 309 § 7; 1975 1st ex.s. c 95 § 10; 1965 c 145 § 11.88.100. Prior: 1961 c 155 § 1; 1951 c 242 § 1; 1947 c 145 § 1; 1945 c 41 § 1; 1917 c 156 § 203; Rem. Supp. 1947 § 1573; prior: 1905 c 17 § 1; Code 1881 § 1612; 1860 p 226 § 329.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Citation of surety on bond: RCW 11.92.056.

Suretyship: Chapter 19.72 RCW.

11.88.105 Reduction in amount of bond. In cases where all or a portion of the estate consisting of cash or securities or both, has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and a receipt is filed by the guardian or limited guardian in court therefor stating that such corporations hold the same subject to order of court then in such case the court may in its discretion dispense with the giving of a bond or reduce the same by the amount of such deposits of cash or securities, and may order that no further reports by said guardian or limited guardian be required until such time as the guardian or limited guardian desires to withdraw such funds or change the investment thereof. [1975 1st ex.s. c 95 § 11; 1965 c 145 § 11.88.105.]

11.88.107 When bond may be dispensed with. In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: *Provided*, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be dispensed with. [1977 ex.s. c 309 § 8; 1975 1st ex.s. c 95 § 12; 1965 c 145 § 11.88.107.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.110 Law on executors' and administrators' bonds applicable. All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians or limited guardians. [1975 1st ex.s. c 95 § 13; 1965 c 145 § 11.88.110. Prior: 1917 c 156 § 204; RRS § 1574; prior: Code 1881 § 1617; 1860 p 228 § 334.]

11.88.115 Notice to department of revenue. Duty of guardian to notify department of revenue; personal liability for taxes upon failure to give notice: See RCW 82.32.240.

11.88.120 Procedure on removal or death of guardian or limited guardian—Delivery of estate to successor.

The court in all cases shall have power to remove guardians or limited guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as prescribed in RCW 11.88.100 as now or hereafter amended; and when any guardian or limited guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian or limited guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such incompetent or disabled person, which may be in the possession of such guardian or limited guardian so removed, or of the personal representatives of a deceased guardian or limited guardian, or in the possession of any other person or persons, or in the possession of a stand-by guardian or limited guardian and upon failure, to commit the party offending to prison, until he complies with the order of the court. [1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.125 Standby limited guardian or limited guardian. (1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incompetent or disabled person, shall file in writing with the court, a designated standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incompetency or disability of the court-appointed guardian or limited guardian. 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 incompetency or disability 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. 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. [1979 c 32 § 1; 1977 ex.s. c 309 § 10; 1975 1st ex.s. c 95 § 6.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.88.130 Transfer of jurisdiction and venue. The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian or limited guardian and such notice to an alleged incompetent or disabled person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incompetent or disabled person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred. [1975 1st ex.s. c 95 § 15; 1965 c 145 § 11.88.130. Prior: 1955 c 45 § 1.]

11.88.140 Termination of guardianship or limited guardianship. (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 11.92.010 as now or hereafter amended, of any person defined as an incompetent or disabled 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;

(b) By an adjudication of competency or an adjudication of termination of disability;

(c) By the death of the incompetent or disabled 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 on court order.* A guardianship or limited guardianship may be terminated by court order after such notice as the court may require:

(a) If the guardianship or limited guardianship is of the estate and the estate is exhausted;

(b) If the guardianship or limited guardianship is no longer necessary for any other reason.

(3) *Effect of termination.* When a guardianship or limited guardianship terminates otherwise than by the death of the incompetent or disabled 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 incompetent or disabled person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incompetent or disabled 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 incompetent's or disabled person's estate shall be determined by the law of decedents' estates. [1977 ex.s. c 309 § 11; 1975 1st ex.s. c 95 § 16; 1965 c 145 § 11.88.140.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Procedure on removal or death of guardian or limited guardian: RCW 11.88.120.

Settlement of estate upon termination other than by death intestate: RCW 11.92.053.

11.88.150 Administration of deceased incompetent's or disabled person's estate. Upon the death of an incompetent or disabled person intestate the guardian or limited guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased incompetent or disabled person without further letters unless within forty days after death of the incompetent or disabled person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his letters of guardianship or limited guardianship, he shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which is assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be published in the manner provided in RCW 11.40.010, once each week for three successive weeks, with proof by affidavit of the publication of such notice to be filed with the court. All claims which are not filed within four months after first publication or within four months after the date of filing of the copy of such notice to creditors with the clerk of the court, whichever is later, shall be barred against the estate. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his account,

and may apply to the complete administration of the estate of the deceased incompetent or disabled person with the consent of the surety. If letters of administration or letters testamentary are granted upon petition filed within forty days after the death of the incompetent or disabled person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims. [1977 ex.s. c 309 § 12; 1975 1st ex.s. c 95 § 17; 1965 c 145 § 11.88.150.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Settlement of estate upon termination other than by death intestate: RCW 11.92.053.

Chapter 11.92

GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN OR LIMITED GUARDIAN

Sections

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11.92.010 Guardians or limited guardians under court control—Legal age. Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age when they shall be eighteen years old. [1975 1st ex.s. c 95 § 18; 1971 c 28 § 5; 1965 c 145 § 11.92.010. Prior: 1923 c 72 § 1; 1917 c 156 § 202; RRS § 1572. Formerly RCW 11.92.010 and 11.92.020.]

Age of majority: RCW 26.28.010.

Married persons deemed to be of full age: RCW 26.28.020.

Termination of guardianship or limited guardianship upon attainment of legal age: RCW 11.88.140.

Transfer of jurisdiction and venue: RCW 11.88.130.

11.92.035 Claims. (1) *Duty of guardian to pay.* A guardian of the estate is under a duty to pay from the estate all just claims against the estate of his incompetent, whether they constitute liabilities of the incompetent which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incompetent or his estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude his personal liability for his own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to prior claims for the care, maintenance and education of the incompetent and of his dependents and existing claims for expenses of administration over other claims.

(2) *Claims may be presented.* Any person having a claim against the estate of an incompetent, or against the guardian of his estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations, and, upon proof thereof, procure an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed.

(3) *Duty of limited guardian to pay.* Claims against a limited guardianship estate shall be paid by the limited guardian only to the extent specified in the order appointing the limited guardian. [1975 1st ex.s. c 95 § 19; 1965 c 145 § 11.92.035.]

Actions against guardian: RCW 11.92.060.

Claims against estate of deceased incompetent or disabled person: RCW 11.88.150.

Disbursement for claims on termination of guardianship or limited guardianship: RCW 11.88.140.

11.92.040 Duties of guardian or limited guardian in general. It shall be the duty of the guardian or limited guardian:

(1) To make out and file within three months after his or her appointment a verified inventory of all the property of the incompetent or disabled person which comes to his or her possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within thirty days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, a written verified account of the administration: *Provided*, That the court in its discretion may allow reports at intervals of up to thirty-six months, with instruction to the guardian or limited

guardian that any substantial increase in income or assets or substantial change in the incompetent's or disabled person's condition shall be reported within thirty days of the substantial increase or change;

(3) Consistent with the powers granted by the court, if he or she is a guardian or limited guardian of the person, to care for and maintain the incompetent or disabled person, assert his or her rights and best interests, and provide timely, informed consent to necessary medical procedures, and if the incompetent or disabled person is a minor, to see that the incompetent or disabled person is properly trained and educated and that the incompetent or disabled person has the opportunity to learn a trade, occupation, or profession. As provided in RCW 11.88.125 as now or hereafter amended, the standby 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. The guardian or limited guardian of the person may be required to report the condition of his or her incompetent or disabled person to the court, at regular intervals or otherwise as the court may direct: *Provided*, That no guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incompetent or disabled person who is, himself or herself, unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapters 71.05 or 72.23 RCW are followed: *Provided further*, That 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) Amputation;

(d) Other psychiatric or mental health procedures which are intrusive on the person's body integrity, physical freedom of movement, or the rights set forth in RCW 71.05.370.

A guardian, limited guardian, or standby guardian who believes such procedures to be necessary for the proper care and maintenance of the incompetent or disabled person shall petition the court for an order unless the court has previously approved that procedure within thirty days immediately past. The court may make such order only after an attorney is appointed in accordance with RCW 11.88.045, as now or hereafter amended, if none has heretofore appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040, as now or hereafter amended;

(4) If he or she is a guardian or limited guardian of the estate, to protect and preserve it, 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 incompetent or disabled 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) To invest and reinvest the property of the incompetent or disabled 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 during a period not exceeding one year following 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, 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 incompetent or disabled person that a specific property be used by the incompetent or disabled person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court for an order authorizing any disbursement on behalf of the incompetent or disabled person: *Provided, however,* That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incompetent or disabled 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 incompetent or disabled person, or if the guardian or limited guardian of the estate has the care and custody of the incompetent or disabled 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 incompetent or disabled person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incompetent or disabled 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. [1985 c 30 § 9. Prior: 1984 c 149 § 12; 1979 c 32 § 2; 1977 ex.s. c 309 § 13; 1975 1st ex.s. c 95 § 20; 1965 c 145 § 11.92.040; prior: 1957 c 64 § 1; 1955 c 205 § 15; 1941 c 83 § 1; 1917 c 156 § 205; Rem. Supp. 1941 § 1575; prior: 1895 c 42 § 1; Code 1881 § 1614.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Compulsory school attendance law, duty to comply with: RCW 28A.27.010.

Disabled person, defined: RCW 11.88.010.

11.92.050 Intermediate accounts—Hearing—Order. Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his account with regard to any and all receipts, expenditures and investments made and acts done by the guardian or limited guardian to the date of said interim report. Upon such petition 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 such petition and require the service of the petition and a notice of such hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event such a hearing be ordered, the court shall also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at said hearing, in writing. At such hearing on said report of the guardian or limited guardian, if the court be 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 trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incompetent or disabled 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 said incompetent or disabled person attains his majority any such interim account may be challenged by said incompetent or disabled person on the ground of fraud. [1975 1st ex.s. c 95 § 21; 1965 c 145 § 11.92.050. Prior: 1943 c 29 § 1; Rem. Supp. 1943 § 1575-1.]

11.92.053 Settlement of estate upon termination other than by death intestate. Within ninety days after the termination of a guardianship for any reason other than the death of the incompetent intestate, the guardian of the estate shall petition the court for an order settling his account as filed in accordance with RCW 11.92.040(2) with regard to any and all receipts, expenditures and investments made and acts done by the guardian to the date of said termination. Upon such petition being filed, the court shall set a date for the hearing of such petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to such petition or may appear at the time and place fixed for the hearing thereof and present his 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.

At such hearing on said petition of the guardian, if the court be satisfied that the actions of the guardian have been proper, and that the guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incompetent, subject only to the right of appeal as upon a final order: *Provided*, That within one year after said incompetent attains his majority any such account may be challenged by said incompetent on the ground of fraud. [1965 c 145 § 11.92.053.]

Administration of deceased incompetent's estate: RCW 11.88.150.

Procedure on removal or death of guardian—Delivery of estate to successor: RCW 11.88.120.

Termination of guardianship: RCW 11.88.140.

11.92.056 Citation of surety on bond. If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the incompetent or disabled person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions. [1975 1st ex.s. c 95 § 22; 1965 c 145 § 11.92.056.]

11.92.060 Guardian to represent incompetent—Compromise of claims—Service of process on behalf of disabled persons. (1) *Guardian may sue and be sued.* When there is a guardian of the estate, all actions between the incompetent or the guardian and third persons in which it is sought to charge or benefit the estate of the incompetent shall be prosecuted by or against the guardian of the estate as such. He shall represent the interests of the incompetent in the action and all process shall be served on him.

(2) *Joinder, amendment and substitution.* When the guardian of the estate is under personal liability for his

own contracts and acts made and performed on behalf of the estate he may be sued both as guardian and in his personal capacity in the same action. Misnomer or the bringing of the action by or against the incompetent shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incompetent before the appointment of a guardian of his estate, such guardian when appointed may be substituted as a party for the incompetent. If the appointment of the guardian of the estate is terminated, his successor may be substituted; if the incompetent dies, his personal representative may be substituted; if the incompetent becomes competent, he may be substituted.

(3) *Garnishment, attachment and execution.* When there is a guardian of the estate, the property and rights of action of the incompetent shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incompetent or the guardian of his estate as such.

(4) *Compromise by guardian.* Whenever it is proposed to compromise or settle any claim by or against the incompetent or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incompetent, may enter an order authorizing the settlement or compromise be made.

(5) *Limited guardian.* Limited guardians may serve and be served with process or actions on behalf of the disabled person, but only to the extent provided for in the court order appointing a limited guardian. [1975 1st ex.s. c 95 § 23; 1965 c 145 § 11.92.060. Prior: 1917 c 156 § 206; RRS § 1576; prior: 1903 c 100 § 1; Code 1881 § 1611; 1860 p 226 § 328.]

Rules of court: SPR 98.08W, 98.10W, 98.16W.

Action against guardian deemed claim: RCW 11.92.035.

11.92.090 Sale, exchange, lease, or mortgage of property. Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of such incompetent or disabled person for the purpose of paying debts or for the care, support and education of such incompetent or disabled person, or to redeem any property of such incompetent's or disabled person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper. [1975 1st ex.s. c 95 § 24; 1965 c 145 § 11.92.090. Prior: 1917 c 156 § 212; RRS § 1582; prior: Code 1881 § 1620; 1855 p 17 § 14.]

11.92.100 Petition—Contents. Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to such incompetent or disabled person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incompetent's or disabled person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the incompetent or disabled person.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.

(8) The age of the incompetent or disabled person, where and with whom residing.

(9) All other facts connected with the estate and condition of the incompetent or disabled person necessary to enable the court to fully understand the same. If there is no personal estate belonging to such incompetent or disabled person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application. [1975 1st ex.s. c 95 § 25; 1965 c 145 § 11.92.100. Prior: 1917 c 156 § 213; RRS § 1583; prior: Code 1881 § 1621; 1860 p 228 § 338; 1855 p 17 § 15.]

11.92.110 Law governing sales of real estate. The order directing the sale of any of the real property of the estate of such incompetent or disabled person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs. [1975 1st ex.s. c 95 § 26; 1965 c 145 § 11.92.110. Prior: 1917 c 156 § 214; RRS § 1524; prior: Code 1881 § 1623; 1860 p 229 § 340.]

11.92.115 Return and confirmation of sale. The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and

such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incompetent or disabled person and of his estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: *Provided*, That such confirmation date shall be at least ten days after such notice is published. [1975 1st ex.s. c 95 § 27; 1965 c 145 § 11.92.115.]

11.92.120 Confirmation conclusive. No sale by any guardian or limited guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud. [1975 1st ex.s. c 95 § 28; 1965 c 145 § 11.92.120. Prior: 1917 c 156 § 215; RRS § 1585; prior: Code 1881 § 1625; 1860 p 229 § 343.]

11.92.125 Broker's fee and closing expenses—Sale, exchange, mortgage or lease of real estate. In connection with the sale, exchange, mortgage, lease, or grant of easement or license in any property, the court may authorize the guardian or limited guardian to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting title insurance, survey, revenue stamps, and other necessary costs and expenses in connection therewith. [1977 ex.s. c 309 § 15; 1965 c 145 § 11.92.125.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.92.130 Performance of contracts. If any person who is bound by contract in writing to perform shall become incompetent or become a disabled person before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of such incompetent or disabled person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW. [1975 1st ex.s. c 95 § 29; 1965 c 145 § 11.92.130. Prior: 1923 c 142 § 5; RRS § 1585a.]

11.92.140 Petition of guardian for court authorization of actions regarding guardianship funds—Application of funds. The court, upon the petition of a guardian of the estate of an incompetent or disabled

person (collectively hereafter referred to in this section as "incompetent"), other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96 RCW, may authorize the guardian to take any action, or to apply funds not required for the incompetent's own maintenance and support, in any fashion the court approves as being in keeping with the incompetent's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incompetent.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incompetent's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incompetent's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incompetent's estate which may extend beyond the incompetent's disability or life, the exercise of options of the incompetent to purchase securities or other property, the exercise of the incompetent's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incompetent's right to any elective share in the estate of the incompetent's deceased spouse, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the tax savings expected to accrue. The proposed action or application of funds may include gifts of the incompetent's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incompetent, or may be made to individuals or charities in which the incompetent is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incompetent under the incompetent's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incompetent insofar as the intentions can be ascertained, and if the incompetent's intentions cannot be ascertained, the incompetent will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incompetent's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incompetent. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court

does not constitute a breach of the guardian's fiduciary duties. [1985 c 30 § 10. Prior: 1984 c 149 § 13.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.92.150 Request for special notice of proceedings.

At any time after the issuance of letters of guardianship in the estate of any incompetent or disabled person, any person interested in the estate, or in the incompetent or disabled person, or any relative of the incompetent or disabled person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon the guardian or limited guardian, or upon the attorney for the guardian or limited guardian, and file with the clerk of the court where the administration of the guardianship or limited guardianship estate is pending, a written request stating that special written notice is desired of any or all of the following matters, steps or proceedings in the administration of the estate:

(1) Filing of petition for sales, exchanges, leases, mortgages, or grants of easements, licenses, or similar interests in any property of the estate.

(2) Filing of all intermediate or final accountings or accountings of any nature whatsoever.

(3) Petitions by the guardian or limited guardian for family allowances or allowances for the incompetent or disabled person or any other allowance of every nature from the funds of the estate.

(4) Petitions for the investment of the funds of the estate.

(5) Petition to terminate guardianship or limited guardianship or petition for adjudication of competency.

(6) Petition for judicial proceedings under chapter 11.96 RCW.

The request for special written notice shall designate the name, address and post office address of the person upon whom the notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with the designation unless and until a new designation has been made.

When any account, petition, or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing. The service may be made by leaving a copy with the person designated, or that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated. [1985 c 30 § 11. Prior: 1984 c 149 § 14; 1975 1st ex.s. c 95 § 30; 1969 c 18 § 1; 1965 c 145 § 11.92.150; prior: 1925 ex.s. c 104 § 1; RRS § 1586-1.]

Short title—Application—**Purpose**—**Severability**—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—**Effective dates**—1984 c 149: See notes following RCW 11.02.005.

11.92.160 Citation for failure to file account or report. Whenever any request for special written notice is served as provided in this section and RCW 11.92.150 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any incompetent or disabled person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts. [1975 1st ex.s. c 95 § 31; 1965 c 145 § 11.92.160. Prior: 1925 ex.s. c 104 § 2; RRS § 1586-2.]

Attorney's fee to contestant of erroneous account or report: RCW 11.76.070.

11.92.170 Removal of property of nonresident incompetent or disabled person. Whenever it is made to appear that it would be in the best interests of the incompetent or disabled person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the incompetent or disabled person appointed in another jurisdiction, or to a person or institution having similar authority with respect to the incompetent or disabled person. [1977 ex.s. c 309 § 16; 1975 1st ex.s. c 95 § 32; 1965 c 145 § 11.92.170. Prior: 1917 c 156 § 217; RRS § 1587; prior: Code 1881 § 1628; 1873 p 320 § 323.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

11.92.180 Compensation and expenses of guardian or limited guardian—**Attorney's fee.** A guardian or limited guardian shall be allowed such compensation for his services as guardian or limited guardian as the court shall deem just and reasonable. Additional compensation may be allowed for his necessary services as attorney and for other necessary services not required of a guardian or limited guardian. He may also be allowed compensation for necessary expenses in the administration of his trust, including reasonable attorney's fees if the employment of an attorney for the particular purpose is necessary. In all cases, compensation of the guardian or limited guardian and his expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed. [1975 1st

ex.s. c 95 § 33; 1965 c 145 § 11.92.180. Prior: 1917 c 156 § 216; RRS § 1586; prior: Code 1881 § 1627; 1855 p 19 § 25.]

Rules of court: SPR 98.12W.

11.92.185 Concealed or embezzled property—**Proceedings for discovery.** The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of incompetents or disabled persons subject to administration under this title. [1975 1st ex.s. c 95 § 34; 1965 c 145 § 11.92.185.]

11.92.190 Detention of person in residential placement facility against their will prohibited—**Effect of court order**—**Service of notice of residential placement.** No residential treatment facility which provides nursing or other care may detain a person within such facility against their will. Any court order, other than an order issued in accordance with the involuntary treatment provisions of chapters 10.77, 71.05, and 72.23 RCW, which purports to authorize such involuntary detention or purports to authorize a guardian or limited guardian to consent to such involuntary detention on behalf of an incompetent or disabled person shall be void and of no force or effect.

Nothing in this section shall be construed to require a court order authorizing placement of an incompetent or disabled person in a residential treatment facility if such order is not otherwise required by law: *Provided*, That notice of any residential placement of an incompetent or disabled person shall be served, either before or after placement, by the guardian or limited guardian on such person, the guardian ad litem of record, and any attorney of record. [1977 ex.s. c 309 § 14.]

Severability—1977 ex.s. c 309: See note following RCW 11.88.005.

Chapter 11.93

UNIFORM GIFTS TO MINORS ACT

Sections

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11.93.010 Definitions. In this chapter, unless the context otherwise requires:

(1) A "bank" is a bank, trust company, national banking association, or mutual savings bank.

(2) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(3) "Court" means the superior courts of the state of Washington.

(4) The "custodial property" includes:

(a) Any property transferred to the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter;

(b) The income from the custodial property; and

(c) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such custodial property.

(5) A "custodian" is a person who is eighteen years or older and is designated as custodian in a manner prescribed in this chapter; the term includes a successor custodian.

(6) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state or a federal credit union or credit union chartered and supervised under the laws of a state; an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, or by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(7) A "guardian" of a minor means the general guardian, guardian, tutor or curator of the minor's property, or estate appointed or qualified by a court of this state or another state.

(8) An "issuer" is a person who places or authorizes the placing of his or her name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his or her property or in an enterprise or to evidence his or her duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(9) A "legal representative" of a person is his or her personal representative, executor or administrator, general guardian, guardian, committee, conservator, tutor, or curator of his or her property or estate.

(10) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this chapter or on the life of a member of the minor's family.

(11) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption, a stepparent or person who has raised a child without the formality of a guardianship, or close family friend.

(12) A "minor" is a person who has not attained the age of twenty-one years.

(13) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, any interest in a general or limited partnership, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(14) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(15) A "trust company" is a bank or corporation organized under the laws of the state of Washington that is authorized to engage in trust business.

(16) A "real property interest" includes any note, mortgage, contract to purchase or sell real property, option to purchase or to sell real property, deed evidencing any title to or interest in real property, or, in general, any interest or instrument commonly recognized as evidencing or purporting to evidence an interest in real property, however minimal. The term does not include a "security" within the definition set forth in subsection (13) of this section. [1985 c 30 § 12. Prior: 1984 c 149 § 16; 1971 ex.s. c 292 § 30; 1967 ex.s. c 88 § 1; 1959 c 202 § 1. Formerly RCW 21.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Effective date—1967 ex.s. c 88: "The effective date of this 1967 act is July 1, 1967." [1967 ex.s. c 88 § 20.] For codification of 1967 ex.s. c 88, see Codification Tables, Volume 0.

11.93.020 Manner of making or providing for gift.

(1) A person who is eighteen years or older may, outright or by a trust agreement executed during his or her lifetime or by will, make or provide for a gift of tangible or intangible personal property, including securities, money, life insurance policies, annuity contracts, or real property interests to a person who is a minor on the date of the gift or distribution:

(a) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another person who is eighteen years or older, or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act";

(b) If the subject of the gift is a security not in registered form, by delivering it to a person who is eighteen years or older other than the donor or a trust company accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE WASHINGTON UNIFORM GIFTS TO MINORS ACT

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Washington uniform gifts to minors act, the following property: (Insert an appropriate description of the tangible or intangible property delivered sufficient to identify it or them) ----- (signature of donor) (name of custodian) hereby acknowledges receipt of the above described property as custodian for the above minor under the Washington uniform gifts to minors act. Dated: ----- (signature of custodian)";

(c) If the subject of the gift is money, by paying or delivering it to a broker or a financial institution for credit to an account in the name of the donor, another person who is eighteen years or older, or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act";

(d) If the subject of the gift is a real property interest and constitutes a recordable interest or charge in or against real property in the records of the county auditor or recorder, by registering it in the name of the donor, another person who is eighteen years or older, or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act";

(e) If the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another person who is eighteen years or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Washington uniform gifts to minors act";

(f) If the gift is by will or as a distribution under a trust agreement, by the legal representative or trustee delivering the subject of the gift to the person, who is eighteen years or older, or a trust company designated by the decedent or settlor to serve as custodian for the minor under the Washington uniform gifts to minors act or similar uniform act of the domicile of the designated custodian and causing the subject of the gift to be registered in the name of that custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Washington (or, alternatively, state of the custodian's domicile) uniform gifts to minor's act." If

the decedent or settlor fails to designate a specific custodian or if the designated custodian dies or is unable or unwilling to serve, the legal representative, with the approval of the court having jurisdiction over the decedent's estate, or the trustee may designate a member of the minor's family who is eighteen years or older, a guardian of the minor, or a trust company as custodian. The legal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of persons or entities permitted in this subsection. The custodian's receipt constitutes a sufficient release and discharge of further accountability by the legal representative or trustee for the gift and acceptance of the custodianship by the custodian.

(2) Each gift made in a manner prescribed in subsection (1) of this section may be made to only one minor and only one person may be the custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) of this section shall promptly do all things within his or her power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his or her designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

(4) The legal representative of an estate to whom a certificate of qualification, or letters testamentary or of administration are issued may, with the approval of the court having jurisdiction over the decedent's estate, or the trustee of a trust of which a minor is a distributee or beneficiary may pay or transfer to a custodian for the minor under this chapter or a similar uniform act of the jurisdiction in which the minor may be domiciled, in the form and manner prescribed in subsection (1) (a) through (e) of this section or comparable provisions of the uniform act of the other jurisdiction, any money, security, or other property qualifying for custodial gifts which is distributable to the minor. The legal representative or trustee may make distribution in this manner if the legal representative or the trustee deems it to be in the best interests of the minor, except where the decedent, settlor, or court authorizing the distribution has expressly directed that distribution of the property due that minor shall not be made in the manner provided for in this subsection. The legal representative, with the approval of the court having jurisdiction over the decedent's estate, or the trustee shall designate a member of the minor's family who is eighteen years or older, a guardian of the minor, or a trust company as custodian. The legal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of persons or entities permitted in this subsection. This chapter governs the custodianship in the same manner as though the legal representative or trustee were the donor. The custodian's receipt constitutes a sufficient release of the transferor and discharge of further accountability by the legal representative or trustee for the property distributed and acceptance of the custodianship by the custodian. Subject to specific directions in the governing instrument, no legal representative or

trustee may be required to pay or transfer to a custodian property otherwise distributable to a minor. A failure or refusal to distribute property to a custodian as authorized in this section does not constitute a breach of the legal representative's or trustee's fiduciary duties.

(5) Only property that could be the subject of a lifetime gift under this chapter may be distributed under subsections (1)(f) and (4) of this section.

(6) This section is applicable to gifts made before or after January 1, 1985, and regardless of whether the persons who made the gifts are alive on that date. [1985 c 30 § 13. Prior: 1984 c 149 § 17; 1967 ex.s. c 88 § 2; 1959 c 202 § 2. Formerly RCW 21.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.93.030 Effect of gift. (1) A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security, real property, life insurance policy, annuity contract or money given, but no guardian of the minor has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(2) By making a gift in a manner prescribed in this chapter, the donor incorporates in the gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, bank, financial institution, life insurance company, broker or third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter. [1985 c 30 § 14. Prior: 1984 c 149 § 18; 1967 ex.s. c 88 § 3; 1959 c 202 § 3. Formerly RCW 21.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.93.040 Duties and powers of custodian. (1) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(2) The custodian shall pay over to the minor for expenditure by the minor, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education, and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in the custodian's discretion deems suitable and proper, with or without court order, with or without regard to the duty of the custodian or of any other person to support the minor or his or her ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(3) The court, on the petition of a parent or guardian of the minor or of the minor, if the minor has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by the minor or to expend so much of or all the custodial property as is

necessary for the minor's support, maintenance or education.

(4) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on attaining the age of twenty-one years, or, if the minor dies before attaining the age of twenty-one years, the custodian shall thereupon deliver or pay it over to the estate of the minor.

(5) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent person of discretion and intelligence who is seeking a reasonable income and the preservation of capital, except that the custodian may, in his or her discretion and without liability to the minor or the minor's estate, retain a security given to the minor in a manner prescribed in this chapter or hold money so given in an account in a financial institution to which it was paid or delivered by the donor.

(6) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms the custodian deems advisable. The custodian may vote in person or by general or limited proxy a security which is custodial property. The custodian may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge, or mortgage of any property by or to such an issuer, and to any other action by such an issuer. The custodian may execute and deliver any and all instruments in writing which the custodian deems advisable to carry out any power as custodian.

(7) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Washington uniform gifts to minors act". The custodian shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act". The custodian shall keep all other custodial property separate and distinct from the custodian's own property in a manner to identify it clearly as custodial property.

(8) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if the minor has attained the age of fourteen years.

(9) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property, and all the rights and powers of a trustee under RCW 11.98.070.

(10) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

(a) In the capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent

as if the custodian were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom the custodian is acting; and

(b) May pay premiums on the policy or contract out of the custodial property. [1985 c 30 § 15. Prior: 1984 c 149 § 19; 1971 ex.s. c 292 § 31; 1967 ex.s. c 88 § 4; 1959 c 202 § 4. Formerly RCW 21.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

11.93.050 Custodian's expenses, compensation, bond, and liabilities. (1) A custodian is entitled to reimbursement from the custodial property for reasonable expenses incurred in the performance of custodial duties.

(2) A custodian may act without compensation for services.

(3) Unless he or she is a donor, a custodian may receive from the custodial property reasonable compensation for his or her services determined by one of the following standards in the order stated:

(a) A direction by the donor when the gift is made; or

(b) An order of the court.

(4) Except as otherwise provided in this chapter, a custodian shall not be required to give a bond for the performance of his or her duties.

(5) A custodian not compensated for services is not liable for losses to the custodial property unless they result from bad faith, intentional wrongdoing, or gross negligence, or from failure to maintain the standard of prudence in investing the custodial property provided in this chapter. [1985 c 30 § 16. Prior: 1984 c 149 § 20; 1959 c 202 § 5. Formerly RCW 21.24.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.93.060 Exemption of third persons from liability. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument of instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of

any money or other property paid or delivered to the custodian. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection (1) of RCW 11.93.070 by a minor to whom a gift has been made in a manner prescribed in this chapter, and who has attained the age of fourteen years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this chapter of the instrument of designation. [1985 c 30 § 17. Prior: 1984 c 149 § 21; 1967 ex.s. c 88 § 5; 1959 c 202 § 6. Formerly RCW 21.24.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.93.070 Resignation, death, or removal of custodian—Bond—Appointment of successor custodian.

(1) Only a member of the minor's family who is eighteen years or older, a guardian of the minor, or a trust company is eligible to become successor custodian. A custodian may designate a successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate a successor before the custodian dies or becomes legally incapacitated and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in a manner prescribed by this chapter.

(2) The designation of a successor custodian as provided in subsection (1) takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his or her legal representative:

(a) Causes the item if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act"; and

(b) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of a successor containing the custodian's resignation as provided in subsection (1) of this section shall promptly do all things within his or her power to put each item of the custodial property in the possession and

control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his or her power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (1) of this section by the custodian or, if none, by the minor if the minor has no guardian and has attained the age of fourteen years, or in the possession and control of the guardian of the minor if the minor has a guardian. If the custodian has executed as provided in subsection (1) of this section more than one instrument of designation, the custodian's legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(4) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (1) of this section is not eligible, dies, or becomes legally incapacitated before the minor attains the age of twenty-one years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (1) of this section, a donor, his or her legal representative, the legal representative of the custodian, or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(5) A donor, the legal representative of a donor, a successor custodian, a member of the minor's family who is eighteen years or older, or a guardian of the minor or the minor if the minor has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his or her duties.

(6) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor. [1985 c 30 § 18. Prior: 1984 c 149 § 22; 1971 ex.s. c 292 § 32; 1967 ex.s. c 88 § 6; 1959 c 202 § 7. Formerly RCW 21.24.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

11.93.080 Accounting by custodian. (1) The minor, if the minor has attained the age of fourteen years, or the legal representative of the minor, a member of the minor's family who is eighteen years or older, or a donor or his or her legal representative may petition the court for an accounting by the custodian or the custodian's legal representative.

(2) The court, in a proceeding under this chapter or otherwise, may require or permit the custodian or the custodian's legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof. [1985 c 30 § 19. Prior: 1984 c 149 § 23; 1959 c 202 § 8. Formerly RCW 21.24.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.93.900 Short title. This chapter may be cited as the "Washington uniform gifts to minors act". [1985 c 30 § 20. Prior: 1959 c 202 § 10. Formerly RCW 21.24.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.93.910 Construction—1959 c 202. (1) This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(2) This chapter shall not be construed as providing an exclusive method for making gifts to minors. [1985 c 30 § 21. Prior: 1959 c 202 § 9. Formerly RCW 21.24.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.93.911 Construction—1967 ex.s. c 88. The provisions of chapter 202, Laws of 1959 hereby amended as hereby amended shall be construed as a continuation of chapter 202, Laws of 1959 hereby amended according to the language employed and not as a new enactment. This amendment of chapter 202, Laws of 1959 hereby amended does not affect gifts made in a manner prescribed therein nor the powers, duties or immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. The provisions of chapter 202, Laws of 1959 hereby amended as hereby amended henceforth apply, however, to all gifts made in a manner and form prescribed in chapter 202, Laws of 1959 hereby amended except insofar as such application impairs constitutionally vested rights. [1985 c 30 § 22. Prior: 1967 ex.s. c 88 § 7. Formerly RCW 21.24.091.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.93.912 Custodianships established prior to January 1, 1985—Construction. All custodianships established prior to January 1, 1985, that have not been fully distributed as of that date shall not terminate upon the minor attaining the age of eighteen, but these custodianships shall remain operative until the minor reaches the age of twenty-one or sooner dies, except that, as to any custodianship established after August 9, 1971, but before January 1, 1985, a minor has the right after attaining the age of eighteen to demand delivery

from the custodian of all or any portion of the custodianship property. [1985 c 30 § 23. Prior: 1984 c 149 § 25.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.93.920 Severability—1959 c 202. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [1985 c 30 § 24. Prior: 1959 c 202 § 11. Formerly RCW 21.24.900.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.94

POWER OF ATTORNEY

Sections

- 11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument.
- 11.94.020 Effect of death, disability or incompetence of principal—Acts without knowledge.
- 11.94.030 Banking transactions.
- 11.94.040 Release from liability for reliance on power of attorney document.
- 11.94.050 Attorney or agent granted principal's powers—Powers to be specifically provided for—Transfer of resources by principal's attorney or agent.
- 11.94.060 Conveyance or encumbrance of homestead.
- 11.94.900 Application of 1984 c 149 §§ 26 through 31 as of January 1, 1985.

11.94.010 Designation—Authority—Effect of acts done—Appointment of guardian, effect—Accounting—Reliance on instrument. (1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her

estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective. [1985 c 30 § 25. Prior: 1984 c 149 § 26; 1974 ex.s. c 117 § 52.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.94.020 Effect of death, disability or incompetence of principal—Acts without knowledge. (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by RCW 11.94.010, does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact, or agent, stating that the attorney did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of a showing of fraud or bad faith, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney. [1985 c 30 § 26. Prior: 1984 c 149 § 27; 1977 ex.s. c 234 § 27; 1974 ex.s. c 117 § 53.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Application, effective date—Severability—1977 ex.s. c 234: See notes following RCW 11.16.083.

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

11.94.030 Banking transactions. If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney in fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney in fact or agent has all the powers the principal would have if alive and competent, then that language, notwithstanding chapter 30.22 RCW, includes the authority (1) to deposit and to make payments from any account in a financial institution, as defined in RCW 30.22.040, in the name of the principal, and (2) to enter any safe deposit box to which the principal has a right of access, subject to any contrary provision in any agreement governing the safe deposit box. [1985 c 30 § 27. Prior: 1984 c 149 § 28.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.040 Release from liability for reliance on power of attorney document. Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability thereby. Unless the document contains a time limit, the length of time which has elapsed from its date of execution shall not prevent a party from reasonably relying on the document. Unless the document contains a requirement that it be filed for record to be effective, a person shall place reasonable reliance on it regardless of whether it is so filed. [1985 c 30 § 28. Prior: 1984 c 149 § 29.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.050 Attorney or agent granted principal's powers—Powers to be specifically provided for—Transfer of resources by principal's attorney or agent. (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, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's wills, codicils, life insurance beneficiary designations, employee benefit plan beneficiary designations, trust agreements, community property agreements; to make any gifts of property owned by the principal; 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 RCW 74.09.532 when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program

for the medically needy. [1985 c 30 § 29. Prior: 1984 c 149 § 30.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.060 Conveyance or encumbrance of homestead. If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney in fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney in fact or agent has all the powers the principal would have if alive and competent, then these powers include the right to convey or encumber the principal's homestead. [1985 c 30 § 30. Prior: 1984 c 149 § 31.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.94.900 Application of 1984 c 149 §§ 26 through 31 as of January 1, 1985. *Sections 26 through 31, chapter 149, Laws of 1984 apply as of January 1, 1985, to all existing or subsequently executed instruments but shall not apply to any instrument the terms of which expressly or impliedly make those sections inapplicable. [1985 c 30 § 140.]

***Reviser's note:** "Sections 26 through 31, chapter 149, Laws of 1984" were codified as RCW 11.94.010 through 11.94.060 and were amended in 1985.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.95

POWERS OF APPOINTMENT

Sections

11.95.010	Releases.
11.95.020	Releases—Partial releases.
11.95.030	Releases—Delivery.
11.95.040	Releases—Effect of RCW 11.95.010 through 11.95.050 on prior releases.
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Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.95.010 Releases. Any power exercisable by deed, will, or otherwise, other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the holder and delivered as hereinafter provided. [1985 c 30 § 31. Prior: 1984 c 149 § 33; 1955 c 160 § 1. Formerly RCW 64.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.020 Releases—Partial releases. A power which is releasable may be released with respect to the whole or any part of the property subject to the power and may also be released in such manner as to reduce or limit the persons or objects, or classes of persons or objects, in whose favor the powers would otherwise be exercisable. A release of a power shall not be deemed to make imperative a power which was not imperative prior to the release, unless the instrument of release expressly so provides. [1985 c 30 § 32. Prior: 1984 c 149 § 34; 1955 c 160 § 2. Formerly RCW 64.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.030 Releases—Delivery. In order to be effective as a release of a power, the instrument of release must be delivered to any trustee or co-trustee of the property, and the person holding the property, to which the power relates. Delivery of a copy of the instrument of release may be made to the secretary of state, which shall from the time of delivery constitute notice of the release to all other persons. [1985 c 30 § 33. Prior: 1984 c 149 § 35; 1955 c 160 § 3. Formerly RCW 64.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.040 Releases—Effect of RCW 11.95.010 through 11.95.050 on prior releases. The enactment of RCW 11.95.010 through 11.95.050 shall not be construed to impair the validity of any release heretofore made which was otherwise valid when executed. [1985 c 30 § 34. Prior: 1984 c 149 § 36; 1955 c 160 § 4. Formerly RCW 64.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.050 Releases—Filing with secretary of state—Fee. It shall be the duty of the secretary of state to mark each instrument of release filed in his office with a consecutive file number and with the date and hour of filing, and to note and index the filing in a suitable alphabetical index according to the name or names of the person or persons signing the same and containing a notation of the address or addresses of the signer or signers, if given in the instrument. The fee for filing is one dollar. The secretary of state shall deliver or mail to the person filing the instrument a receipt showing the filing number and date and hour of filing. [1985 c 30 § 35. Prior: 1955 c 160 § 5. Formerly RCW 64.24.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.95.060 Exercise of powers of appointment. (1) The holder of a testamentary or lifetime power of appointment may exercise the power by appointing property outright or in trust and may grant further powers to appoint. The powerholder may designate the trustee, powers, situs, and governing law for property appointed in trust.

(2) The holder of a testamentary power may exercise the power only by the powerholder's last will, signed before or after the effective date of the instrument granting the power, that manifests an intent to exercise the power and that identifies the instrument granting the power and its date. Unless the person holding the property subject to the power has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. The person holding the property shall not incur liability to anyone for transfers so made. A testamentary residuary clause is not deemed the exercise of a testamentary power.

(3) The holder of a lifetime power of appointment shall exercise that power only by delivering a written instrument, signed by the holder, to the person holding the property subject to the power. If the holder conditions the distribution of the appointed property on a future event, the written instrument may be revoked in the same manner at any time before the property becomes distributable upon occurrence of the event specified, except that any contrary provisions in the written instrument exercising the power, including provisions stating the exercise of the power is irrevocable, shall be controlling. If the written instrument is revoked, the holder of the power may reappoint the property that was appointed in the instrument. In the absence of signing and delivery of such a written instrument, a lifetime power is not deemed exercised. [1985 c 30 § 36. Prior: 1984 c 149 § 38.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.95.070 Application of chapter—Application of 1984 c 149 to powers of appointment. (1) This chapter does not apply to any power as trustee described in and subject to RCW 11.98.019.

(2) *Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984 and the 1984 recodification of RCW 64.24.050 as RCW 11.95.050 apply as of January 1, 1985, to all existing or subsequently created powers of appointment, but not to any power of appointment that expressly or by necessary implication make[s] those 1984 changes inapplicable. [1985 c 30 § 37. Prior: 1984 c 149 § 39.]

*Reviser's note: "Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984" were codified as RCW 11.95.010 through 11.95.040,

11.95.060, and 11.95.070. RCW 11.95.060 and 11.95.070 were amended in 1985.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.96

JURISDICTION AND PROCEEDINGS

(Formerly: Appeals)

Sections

11.96.009	Original jurisdiction in probate and trust matters—Powers of courts.
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11.96.030	Exercise of powers—Orders, writs, process, etc.
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11.96.050	Venue in proceedings involving probate or trust matters.
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11.96.160	Appeals to supreme court or court of appeals.
11.96.170	Nonjudicial resolution of disputes—Written agreement—Appointment of special representative—Qualifications—Filing of agreement or memorandum with court—Notice of filing—Objections.
11.96.180	Appointment of guardians ad litem.
11.96.900	Purpose—1985 c 31.
11.96.901	Severability—1985 c 31.
11.96.902	Short title—Washington trust act of 1984.
11.96.903	Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985.

11.96.009 Original jurisdiction in probate and trust matters—Powers of courts. (1) The superior court shall have original jurisdiction over probates in the following instances:

- (a) When a resident of the state dies; or
- (b) When a nonresident of the state dies in the state; or
- (c) When a nonresident of the state dies outside the state.

(2) The superior court shall have original jurisdiction over trusts and trust matters.

(3) The superior courts in the exercise of their jurisdiction of matters of probate and trusts shall have power to probate or refuse to probate wills, appoint personal representatives of deceased, incompetent, or disabled persons and administer and settle all such estates, and administer and settle all trusts and trust matters, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction. [1985 c 31 § 2. Prior: 1984 c

149 § 41; 1965 c 145 § 11.02.010; prior: 1917 c 156 § 1; RRS § 1371; prior: 1891 c 155 § 1; Code 1881 § 1299; 1873 p 253 § 3; 1863 p 199 § 3; 1860 p 167 § 3; 1854 p 309 § 3. Formerly RCW 11.02.010 and 11.16.010.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

"Incompetent" person defined; includes minors: RCW 11.88.010.

Judicial transfer of trust assets or administration, requirements: RCW 11.98.055.

"Personal representative" defined: RCW 11.02.005(1).

11.96.020 Legislative intent—Powers of courts when law inapplicable, insufficient, or doubtful. It is the intention of this title that the courts mentioned shall have full and ample power and authority to administer and settle all estates of decedents and incompetent and disabled persons in this title mentioned and to administer and settle all trusts and trust matters. If the provisions of this title with reference to the administration and settlement of such estates or trusts should in any cases and under any circumstances be inapplicable or insufficient or doubtful, the court shall nevertheless have full power and authority to proceed with such administration and settlement in any manner and way which to the court seems right and proper, all to the end that such estates or trusts may be by the court administered upon and settled. [1985 c 31 § 3. Prior: 1984 c 149 § 42; 1965 c 145 § 11.02.020; prior: 1917 c 156 § 219; RRS § 1589. Formerly RCW 11.02.020 and 11.16.020.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.030 Exercise of powers—Orders, writs, process, etc. In exercising any of the jurisdiction or powers by this title given or intended to be given, the court is authorized to make, issue and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes not inconsistent with the provisions of this title, which may be considered proper or necessary in the exercise of such jurisdiction. [1985 c 31 § 4. Prior: 1965 c 145 § 11.02.030; prior: 1917 c 156 § 220; RRS § 1590. Formerly RCW 11.02.030 and 11.16.030.]

11.96.040 Situs of trust. Unless otherwise provided in the instrument creating the trust, the situs of a trust is the place where the principal place of administration of the trust is located. As used in this section, the "principal place of administration of the trust" is 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. [1985 c 31 § 5. Prior: 1984 c 149 § 45.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.050 Venue in proceedings involving probate or trust matters. For purposes of venue in proceedings involving probate or trusts and trust matters, the following shall apply:

(1) Proceedings under Title 11 RCW pertaining to trusts shall be commenced either:

(a) In the superior court of the county in which the situs of the trust is located as provided in RCW 11.96.040;

(b) In the superior court of the county in which a trustee resides or has its principal place of business; or

(c) With respect to testamentary trusts, in the superior court of the county where letters testamentary were granted to a personal representative, and in the absence of such letters, then in any county where letters testamentary could have been granted in accordance with subsection (2) of this section.

(2) Wills shall be proven, letters testamentary or of administration granted, and other proceedings under Title 11 RCW pertaining to probate commenced, either:

(a) In the county in which the decedent was a resident at the time of death;

(b) In the county in which the decedent died, or in which any part of the estate may be, if the decedent was not a resident of this state; or

(c) In the county in which any part of the estate may be, the decedent having died out-of-state, and not having been resident in this state at the time of death.

(3) No action undertaken is defective or invalid because of improper venue if the court has jurisdiction of the matter. [1985 c 31 § 6. Prior: 1984 c 149 § 46.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.060 Statutes of limitations—Actions involving trusts and estates. (1) Any action against the trustee of an express trust, excluding those trusts excluded from the definition of express trusts under RCW 11.98.009, but including all express trusts, whenever executed, for any breach of fiduciary duty, must be brought within three years from the earlier of (a) the time the alleged breach was discovered or reasonably should have been discovered, (b) the discharge of a trustee from the trust as provided in *RCW 11.98.040, or (c) the time of termination of the trust or the trustee's repudiation of the trust.

(2) Any action by an heir, legatee, or other interested party, to whom proper notice was given if required, against a personal representative for alleged breach of fiduciary duty must be brought prior to discharge of the personal representative.

(3) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of any statute of limitations stated in subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under chapter 11.96 RCW, is not tolled if the unascertained or unborn heir, beneficiary, or class of persons, or minor, incompetent, or disabled person, or person identified in RCW 11.96.170(2) or 11.96.180 whose identity or address is unknown, 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.

(4) Notwithstanding subsections (2) and (3) of this section, any cause of action against a trustee of an express trust, as provided for in subsection (1) of this section is not barred by the statute of limitations if it is brought within three years from January 1, 1985. In addition, any action as specified in subsection (2) of this section against the personal representative is not barred by this statute of limitations if it is brought within one year of January 1, 1985. [1985 c 31 § 7. Prior: 1984 c 149 § 47.]

***Reviser's note:** The reference to RCW 11.98.040 appears to be erroneous. RCW 11.98.040, recodified as RCW 11.98.160 as of January 1, 1985, does not relate to the discharge of trustees. The RCW section governing that subject is RCW 11.98.041.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.070 Persons entitled to judicial proceedings for declaration of rights or legal relations regarding trust or estate. A trustor, grantor, personal representative, trustee, or other fiduciary, creditor, devisee, legatee, heir, or trust beneficiary interested in the administration of a trust, or the attorney general in the case of a charitable trust under RCW 11.110.120, or of the estate of a decedent, incompetent, or disabled person, may have a judicial proceeding for the declaration of rights or legal relations in respect to the trust or estate:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) To direct the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity;

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings;

(4) To confer upon the personal representatives or trustees any necessary or desirable powers not otherwise granted in the instrument or given by law that the court determines are not inconsistent with the provisions or purposes of the will or trust;

(5) To amend or conform the will or the trust instrument in the manner required to qualify the gift thereunder for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; or

(6) To resolve any other matter in this title referencing this judicial proceedings section.

The provisions of this chapter apply to disputes arising in connection with estates of incompetents or disabled persons unless otherwise covered by chapters 11.88 and 11.92 RCW. [1985 c 31 § 8. Prior: 1984 c 149 § 48.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.080 Hearing on petition—Form and content of notice. The court shall make an order fixing the time

and place for hearing the petition. The court shall approve the form and content of the notice. Notice of hearing shall be signed by the clerk of the court. [1985 c 31 § 9. Prior: 1984 c 149 § 49.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.090 Power of clerk to fix dates of hearings—Exceptions. The clerk of each of the superior courts is authorized to fix the time of hearing of all applications, petitions and reports in probate and guardianship proceedings, except the time for hearings upon show cause orders and citations and except for the time of hearings set under RCW 11.96.080. The authority herein granted is in addition to the authority vested in the superior courts and superior court commissioners. [1985 c 31 § 10. Prior: 1984 c 149 § 51; 1965 c 145 § 11.02.060; prior: 1947 c 54 § 1; Rem. Supp. 1947 § 1590-a. Formerly RCW 11.02.060 and 11.16.110.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.100 Notice in judicial proceedings under Title 11 RCW requiring notice. Subject to RCW 11.96.110, in all judicial proceedings under Title 11 RCW that require notice, such notice shall be personally served or mailed to each trustee, personal representative, heir, beneficiary including devisees, legatees, and heirs, guardian ad litem, and person having an interest in the trust or estate whose name and address are known to the petitioner at least twenty days prior to the hearing on the petition, unless otherwise provided by statute or ordered by the court under RCW 11.96.080. Proof of such service or mailing shall be made by affidavit filed at or before the hearing. In addition, notice shall also be given to the attorney general if required under RCW 11.110-.120. [1985 c 31 § 11. Prior: 1984 c 149 § 53.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.110 Notice constituting compliance with notice requirements of Title 11 RCW. Notwithstanding provisions of this chapter to the contrary, there is compliance with the notice requirements of Title 11 RCW for notice to the beneficiaries of, or persons interested in an estate or a trust, or to beneficiaries or remaindermen, including all living persons who may participate in the corpus or income of the trust or estate, if notice is given as follows:

(1) If an interest in an estate or trust has been given to persons who compose a certain class upon the happening of a certain event, notice shall 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.

(2) If an interest in an estate or trust has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or to persons who are, or may be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice shall be given to that living person.

(3) Except as otherwise provided in subsection (2) of this section, if an interest in an estate or trust has been given to a person, a class of persons, or both upon the happening of any future event, and the same interest or a share of such interest is to pass to another person, class of persons, or both, upon the happening of an additional future event, notice shall be given to the living person or persons who would take the interest upon the happening of the first event.

(4) Notice shall be given to persons who would not otherwise be entitled to notice by law if a conflict of interest involving the subject matter of the trust or estate proceeding is known to exist between a person to whom notice is given and a person to whom notice need not be given under Title 11 RCW.

Any action taken by the court is conclusive and binding upon each person receiving actual or constructive notice in the manner provided in this section. [1985 c 31 § 12. Prior: 1984 c 149 § 54.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.120 Special notice. Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150. [1985 c 31 § 13. Prior: 1984 c 149 § 55.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.130 Trial rules—Judgments. All issues of fact joined in probate or trust proceedings shall be tried in conformity with the requirements of the rules of practice in civil actions. The probate or trust proceeding may be commenced as a new action or as an action incidental to an existing probate or trust proceeding. Once commenced, the action may be consolidated with an existing probate or trust proceeding or converted to a separate action upon the motion of any party for good cause shown, or by the court on its own motion. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If no jury is demanded, the court shall try the issues joined, and sign and file its findings and decision in writing, as provided for in civil actions. Judgment on the issue joined, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions. [1985 c 31 § 14. Prior: 1984 c 149 § 56.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.140 Costs. Either the superior court or the court on appeal, may, in its discretion, order costs, including attorneys fees, to be paid by any party to the proceedings or out of the assets of the estate, as justice may require. [1985 c 31 § 15. Prior: 1984 c 149 § 57.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.150 Execution upon trust income or vested remainder—Permitted, when. Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman. [1985 c 31 § 16. Prior: 1955 c 33 § 30.30.120; prior: 1951 c 226 § 1. Formerly RCW 30.30.120.]

11.96.160 Appeals to supreme court or court of appeals. Any interested party may appeal to the supreme court or the court of appeals from any final order, judgment or decree of the court, and such appeals shall be in the manner and way provided by law for appeals in civil actions. [1985 c 31 § 17. Prior: 1971 c 81 § 53; 1965 c 145 § 11.96.010; prior: 1917 c 156 § 221; RRS § 1591. Formerly RCW 11.96.010 and 11.16.040.]

Rules of court: Rules of Appellate Procedure.

11.96.170 Nonjudicial resolution of disputes—Written agreement—Appointment of special representative—Qualifications—Filing of agreement or memorandum with court—Notice of filing—Objections. (1) If the persons listed in RCW 11.96.070 and those entitled to notice under RCW 11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or any other matter in Title 11 RCW referencing this nonjudicial resolution procedure, then the agreement shall be evidenced by a written agreement executed by all necessary persons as provided in this section.

(2) If necessary, the personal representative or trustee may petition the court for the appointment of a special representative to represent a person interested in the estate or trust who is a minor, incompetent, disabled, or who is yet unborn or unascertained, or a person whose identity or address is unknown. The special representative has authority to enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or class are not in conflict. Those entitled to receive notice for persons or beneficiaries described in RCW 11.96.110 may enter into a binding agreement on behalf of such persons or beneficiaries.

(3) The special representative shall be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative shall have no interest in any affected estate or trust, and shall not be related to any personal representative, trustee, beneficiary, or other person interested in the estate or trust. The special representative is entitled to reasonable compensation for services which shall be paid from the principal of the estate or trust whose beneficiaries

are represented. Upon execution of the written agreement, the special representative shall be discharged of any further responsibility with respect to the estate or trust.

(4) The written agreement or a memorandum summarizing the provisions of the written agreement may, at the option of any person interested in the estate or trust, be filed with the court having jurisdiction over the estate or trust. The person filing the agreement or memorandum shall within five days thereof mail a copy of the agreement and a notice of the filing to each person interested in the estate or trust whose address is known. Notice shall be in substantially the following form:

CAPTION
OF CASE

NOTICE OF FILING OF
AGREEMENT OR
MEMORANDUM
OF AGREEMENT

Notice is hereby given that the attached document was filed by the undersigned in the above entitled court on the _____ day of _____, 19... Unless you file a petition objecting to the agreement within 30 days of the above specified date the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust.

If you file and serve a petition within the period specified, you should ask the court to fix a time and place for the hearing on the petition and provide for at least a ten days' notice to all persons interested in the estate or trust.

DATED this _____ day of _____, 19...

.....
(Party to the agreement)

(5) Unless a person interested in the estate or trust files a petition objecting to the agreement within thirty days of the filing of the agreement or the memorandum, the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust. If all persons interested in the estate or trust waive the notice required by this section, the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust effective upon the date of filing. [1985 c 31 § 18. Prior: 1984 c 149 § 61.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

*Dispute resolution procedures applicable to consolidation of trusts: RCW 11.98.080.
determination of recipient of life insurance or retirement proceeds: RCW 11.98.170.
trust gift distribution: Chapter 11.108 RCW.*

11.96.180 Appointment of guardians ad litem. (1) The court, upon its own motion or on request of a person interested in the trust or estate, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem to represent the interests of a minor, incapacitated, unborn, or unascertained person, or person whose identity and address

are unknown, or a designated class of persons who are not ascertained or are not in being. When not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) For the purposes of this section, a trustee is a person interested in the trust and a personal representative is a person interested in an estate.

(3) The court appointed guardian ad litem supersedes the special representative if so provided in the court order.

(4) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and 11.96.110. [1985 c 31 § 19. Prior: 1984 c 149 § 62.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.96.900 Purpose—1985 c 31. The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution. [1985 c 31 § 1.]

11.96.901 Severability—1985 c 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. [1985 c 31 § 20.]

11.96.902 Short title—Washington trust act of 1984. See RCW 11.02.900.

11.96.903 Application—1985 c 30—Application of 1984 c 149 as amended and reenacted in 1985. See RCW 11.02.901.

Chapter 11.97

EFFECT OF TRUST INSTRUMENT

Sections

- 11.97.010 Power of trustor—Trust provisions controlling.
11.97.900 Application of chapter.

11.97.010 Power of trustor—Trust provisions controlling. 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 11.104 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. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment. [1985 c 30 §

38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW 30.99.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.97.900 Application of chapter. This chapter applies to the provisions of chapters 11.95, 11.98, 11.100, and 11.104 RCW and to RCW 11.106.020. [1985 c 30 § 39. Prior: 1984 c 149 § 65.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.98

TRUSTS

Sections

- 11.98.009 Application of chapter.
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11.98.019 Relinquishment of powers by trustee.
11.98.029 Resignation of trustee.
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Property taxes
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11.98.009 Application of chapter. 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. [1985 c 30 § 40. Prior: 1984 c 149 § 67; 1983 c 3 § 49; 1959 c 124 § 1. Formerly RCW 30.99.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.016 Exercise of powers by co-trustees. (1) Any power vested in three or more trustees jointly may be exercised by a majority of such trustees; but no trustee who has not joined in exercising a power is liable to the beneficiaries or to others for the consequences of such exercise; nor is a dissenting trustee liable for the consequences of an act in which that trustee joins at the direction of the majority of the trustees, if that trustee expressed his or her dissent in writing to each of the co-trustees at or before the time of such joinder.

(2) Where two or more trustees are appointed to execute a trust and one or more of them for any reason does not accept the appointment or having accepted ceases to be a trustee, the survivor or survivors shall execute the trust and shall succeed to all the powers, duties and discretionary authority given to the trustees jointly.

(3) An individual trustee, with a co-trustee's consent, may, by a signed, written instrument, delegate any power, duty, or authority as trustee to that co-trustee. This delegation is effective upon delivery of the instrument to that co-trustee and may be revoked at any time by delivery of a similar signed, written instrument to that co-trustee. However, if a power, duty, or authority is expressly conferred upon only one trustee, it shall not

be delegated to a co-trustee. If that power, duty, or authority is expressly excluded from exercise by a trustee, it shall not be delegated to the excluded trustee.

(4) If one trustee gives written notice to all other co-trustees of an action that the trustee proposes be taken, then the failure of any co-trustee to deliver a written objection to the proposal to the trustee, at the trustee's then address of record and within fifteen days from the date the co-trustee actually receives the notice, constitutes formal approval by the co-trustee, unless the co-trustee had previously given written notice that was unrevoked at the time of the trustee's notice, to that trustee that this fifteen-day notice provision is inoperative.

(5) As to any effective delegation made under subsection (3) of this section, a co-trustee has no liability for failure to participate in the administration of the trust.

Nothing in this section, however, otherwise excuses a co-trustee from liability for failure to participate in the administration of the trust and nothing in this section, including subsection (3) of this section, excuses a co-trustee from liability for the failure to attempt to prevent a breach of trust. [1985 c 30 § 41. Prior: 1984 c 149 § 68; 1959 c 124 § 3. Formerly RCW 30.99.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.019 Relinquishment of powers by trustee. Any trustee may, by written instrument delivered to any then acting co-trustee and to the current adult income beneficiaries of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it. [1985 c 30 § 42. Prior: 1984 c 149 § 69.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.029 Resignation of trustee. Any trustee may resign, without judicial proceedings, by a writing signed by the trustee and filed with the trust records, to be effective upon the trustee's discharge as provided in RCW 11.98.041. [1985 c 30 § 43. Prior: 1959 c 124 § 4. Formerly RCW 30.99.040.]

Reviser's note: RCW 11.98.029 was also repealed by 1985 c 30 § 143 without cognizance of its amendment in that same enactment.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.029 Resignation of trustee. [1959 c 124 § 4. Formerly RCW 30.99.040.] Repealed by 1985 c 30 § 143.

Reviser's note: This section was also amended by 1985 c 30 § 43 without cognizance of the repeal thereof.

11.98.039 Nonjudicial change of trustee—Notice—Judicial appointment or change of trustee—Liability and duties of successor fiduciary. (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 all adult income beneficiaries of the trust and to all known and identifiable adults for whom the income of the trust is being accumulated. 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 11.98.040.

(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, the beneficiaries and the then-acting trustee, if any, of a trust may agree for the nonjudicial change of the trustee under RCW 11.96.170. The trustee, or any beneficiary if there is no then-acting trustee, shall give written notice of the proposed change in trustee to every beneficiary or special representative, and to the trustor if alive. The notice shall: (a) State the name and mailing address of the trustee or the beneficiary giving the notice; (b) include a copy of the governing instrument; (c) state the name and mailing address of the successor trustee; and (d) include a copy of the proposed successor trustee's agreement to serve as trustee. The notice shall advise the recipient of the right to petition for a judicial appointment or change in trustee as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed change in trustee may be indicated. 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) 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 under the procedures provided in chapter 11.96 RCW (a) whenever the office of trustee becomes vacant, (b) upon filing of a petition of resignation by a trustee, (c) upon the giving of notice of the change in trustee as referred to in subsection (1) or (2) of this section, or (d) for any other reasonable cause.

(4) 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. [1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW 30.99.050.]

***Reviser's note:** The reference to RCW 11.98.040 appears to be erroneous. RCW 11.98.040, recodified as RCW 11.98.160 as of January 1, 1985, does not relate to the discharge of trustees. The RCW section governing that subject is RCW 11.98.041. (See reference to RCW 11.98.041 in subsection (2) of the section.)

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.041 Change of trustee—Discharge of outgoing trustee, when. Where a vacancy occurs in the office of trustee under the circumstances described in RCW 11.98.039 (1) or (2), the outgoing trustee shall be discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW 11.98.039, whichever occurs first, or if no notice is required under RCW 11.98.039(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under RCW 11.98.039(3) regarding the appointment or change of a trustee of the trust. Where a petition is filed under RCW 11.98.039(3) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require. [1985 c 30 § 141.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.045 Criteria for transfer of trust assets or administration. (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 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.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section, 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). [1985 c 30 § 45. Prior: 1984 c 149 § 74.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required. (1) The trustee may transfer trust assets or the place of administration in accordance with RCW 11.96.170. In addition, the trustee shall give written notice to those persons entitled to notice as provided for under RCW 11.96.100 and 11.96.110 and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW. The notice shall:

(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 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. The notice shall 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; 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, the trustee may transfer the trust assets or place of administration 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. [1985 c 30 § 46. Prior: 1984 c 149 § 75.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.055 Judicial transfer of trust assets or administration. (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 in accordance with chapter 11.96 RCW.

(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 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. [1985 c 30 § 47. Prior: 1984 c 149 § 76.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.060 Power of successor trustee. A successor trustee of a trust shall succeed to all the powers, duties and discretionary authority of the original trustee. [1985 c 30 § 48. Prior: 1959 c 124 § 6. Formerly RCW 30.99.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.065 Change in form of corporate trustee. Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service. [1985 c 30 § 49. Prior: 1984 c 149 § 78.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.070 Power of trustee. 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 RCW 11.98.070(31);

(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, 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) 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 resides, or third person;

(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

(1) 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;

(2) 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;

(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 a trustee may not delegate all of the trustee's duties and responsibilities, and except that this employment does not relieve the trustee of liability for the discretionary acts of a person, which if done by the trustee, would result in liability to the trustee, or of the duty to select and retain a person with reasonable care;

(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) Rely with acquittance on advice of counsel on questions of law; and

(34) 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. [1985 c 30 § 50. Prior: 1984 c 149 § 80; 1959 c 124 § 7. Formerly RCW 30.99.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.080 Consolidation of trusts. (1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

(b) Whether provided in the trusts or not, in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(b) of this section and the requirements of subsection (1)(d) of this section are satisfied; or

(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;

(d) Consolidation under subsection (2) or (3) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries;

(e) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96.170.

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to

the beneficiaries of every trust affected by the consolidation as provided in RCW 11.96.100 and 11.96.110 and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(d) of this section. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW 11.96.100 and 11.96.110, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under chapter 11.96 RCW. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(d) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) This section applies to all trusts whenever created. [1985 c 30 § 51. Prior: 1984 c 149 § 81.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.090 Nonliability of third persons without knowledge of breach. In the absence of knowledge of a breach of trust, no party dealing with a trustee is required to see to the application of any moneys or other properties delivered to the trustee. [1985 c 30 § 52. Prior: 1984 c 149 § 83; 1959 c 124 § 8. Formerly RCW 30.99.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.100 Nonliability for action or inaction based on lack of knowledge of events. When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, then a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for any action or inaction based on lack of knowledge of the event. A corporate trustee is not liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered. [1985 c 30 § 53. Prior: 1984 c 149 § 84; 1959 c 124 § 9. Formerly RCW 30.99.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.110 Contract and tort liability. As used in this section, a trust includes a probate estate, and a trustee includes a personal representative. The words "trustee" and "as trustee" mean "personal representative" and "as personal representative" where this section is being construed in regard to personal representatives.

Actions on contracts which have been transferred to a trust and on contracts made by a trustee, and actions in tort for personal liability incurred by a trustee in the course of administration may be maintained by the party in whose favor the cause of action has accrued as follows:

(1) The plaintiff may sue the trustee in the trustee's representative capacity and any judgment rendered in favor of the plaintiff is collectible by execution out of the trust property: *Provided, however,* If the action is in tort, collection shall not be had from the trust property unless the court determines in the action that (a) the tort was a common incident of the kind of business activity in which the trustee or the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor the trustee's predecessor, nor any officer or employee of the trustee or the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on the contract, if personal liability is not excluded. Either the addition by the trustee of the words "trustee" or "as trustee" after the signature of a trustee to a contract or the transaction of business as trustee under an assumed name in compliance with chapter 19.80 RCW excludes the trustee from personal liability. If the action is on a contract transferred to the trust or trustee, subject to any rights

therein vested at time of the transfer, the trustee is personally liable only if he or she has in writing assumed that liability.

(3) In any such action against the trustee in the trustee's representative capacity the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if the trustee had paid the plaintiff's claim.

(4) The trustee may also be held personally liable for any tort committed by him or her, or by his or her agents or employees in the course of their employments, subject to the rights of exoneration or reimbursement:

(a) A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration therefor from the trust property if (i) the tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust, or (ii) although the tort was not a common incident of such activity, if neither the trustee nor any officer or employee of the trustee was guilty of personal fault in incurring the liability;

(b) A trustee who commits a tort which increases the value of the trust property is entitled to exoneration or reimbursement with respect thereto to the extent of such increase in value, even though the trustee would not otherwise be entitled to exoneration or reimbursement.

(5) The procedure for all actions provided in this section is as provided in chapter 11.96 RCW.

(6) Nothing in this section shall be construed to change the existing law with regard to the liability of the trustee of a charitable trust for the torts of the trustee. [1985 c 30 § 54. Prior: 1984 c 149 § 85; 1983 c 3 § 50; 1959 c 124 § 10. Formerly RCW 30.99.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.130 Violation of rule against perpetuities by instrument—Periods during which trust not invalid. If any provision of an instrument creating a trust, including the provisions of any further trust created, or any other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument violates the rule against perpetuities, neither such provision nor any other provisions of the trust, or such further trust or other disposition, is thereby rendered invalid during any of the following periods:

(1) The twenty-one years following the effective date of the instrument.

(2) The period measured by any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such life or lives.

(3) The period measured by any portion of any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such portion of such life or lives; and

(4) The twenty-one years following the expiration of the periods specified in (2) and (3) above. [1985 c 30 §

55. Prior: 1984 c 149 § 87; 1965 c 145 § 11.98.010; prior: 1959 c 146 § 1. Formerly RCW 11.98.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.140 Distribution of assets and vesting of interest during period trust not invalid. If, during any period in which an instrument creating a trust, as described in RCW 11.98.130, or any provision thereof, is not to be rendered invalid by the rule against perpetuities, any of the trust assets should by the terms of the instrument or pursuant to any further trust or other disposition resulting from exercise of the power of appointment granted in or created through authority under such instrument, become distributable or any beneficial interest in any of the trust assets should by the terms of the instrument, or such further trust or other disposition become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument, or such further trust or other disposition. [1985 c 30 § 56. Prior: 1984 c 149 § 88; 1965 c 145 § 11.98.020; prior: 1959 c 146 § 2. Formerly RCW 11.98.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.150 Distribution of assets at expiration of period. If, at the expiration of any period in which an instrument creating a trust, as described in RCW 11.98.009, or any provision thereof, is not to be rendered invalid by the rule against perpetuities, any of the trust assets have not by the terms of the trust instrument become distributable or vested, then the assets shall be distributed as the superior court having jurisdiction directs, giving effect to the general intent of the creator of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment. [1985 c 30 § 57. Prior: 1984 c 149 § 89; 1965 c 145 § 11.98.030; prior: 1959 c 146 § 3. Formerly RCW 11.98.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.160 Effective date of irrevocable inter vivos trust—Effective date of revocable inter vivos or testamentary trust. For the purposes of this chapter the effective date of an instrument purporting to create an irrevocable inter vivos trust is the date on which it is executed by the trustor, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust is the date of the trustor's or testator's death. [1985 c 30 § 58. Prior: 1984 c 149 § 90; 1965 c 145 § 11.98.040; prior: 1959 c 146 § 4. Formerly RCW 11.98.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.98.170 Designation of trustee as beneficiary of life insurance policy or retirement plan—Determination of proper recipient of proceeds—Definitions—Beneficiary designations executed before January 1, 1985, not invalidated. (1) Any life insurance policy or retirement plan payment provision may designate as beneficiary:

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or retirement plan proceeds, by testamentary disposition or otherwise and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter 11.96 RCW, unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter 11.96 RCW.

(3) The proceeds of the insurance or retirement plan as collected by the trustee are not subject to debts of the insured or the plan participant to any greater extent than if the proceeds were payable to any named beneficiary other than the personal representative or the estate of the insured or of the plan participant.

(4) For purposes of this section the following definitions apply:

(a) "Plan administrator" means the person upon whom claim must be made in order for retirement plan proceeds to be paid upon the death of the plan participant.

(b) "Retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for payment to a beneficiary designated by the plan participant for whom the plan is established. The term includes, without limitation, such plans regardless of source of funding, and, for example, includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other retirement plan or program.

(c) "Trustee" includes any custodian under chapter 11.93 RCW or any similar statutory provisions of any other state and the terms "trust agreement" and "will" refer to the provisions of chapter 11.93 RCW or such similar statutory provisions of any other state.

(5) Enactment of this section does not invalidate life insurance policy or retirement plan beneficiary designations executed prior to January 1, 1985, naming a trustee established by will or by trust agreement. [1985 c 30 § 59. Prior: 1984 c 149 § 91.]

~~Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.~~

~~Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.~~

11.98.900 Application of RCW 11.98.130 through 11.98.160. The provisions of RCW 11.98.130 through 11.98.160 are applicable to any instrument purporting to create a trust regardless of the date such instrument bears, unless it has been previously adjudicated in the courts of this state. [1985 c 30 § 60. Prior: 1984 c 149 § 93; 1971 ex.s. c 229 § 1; 1965 c 145 § 11.98.050; prior: 1959 c 146 § 5. Formerly RCW 11.98.050.]

~~Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.~~

~~Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.~~

~~Effective date—1959 c 146: The effective date of 1959 c 146, herein reenacted by 1965 c 145 § 11.98.050, was midnight June 10, 1959, see preface 1959 session laws.~~

11.98.910 Severability—1959 c 124. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1985 c 30 § 61. Prior: 1959 c 124 § 11. Formerly RCW 30.99.900.]

~~Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.~~

11.98.920 Short title. This act shall be known as the "Washington Trust Act." [1985 c 30 § 62. Prior: 1959 c 124 § 12. Formerly RCW 30.99.910.]

~~Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.~~

Chapter 11.99 CONSTRUCTION

Sections

11.99.010	Effective date of title.
11.99.013	Title, chapter, section headings not part of law.
11.99.015	Repeal.
11.99.020	Savings clause—Rights not affected.
11.99.030	Severability—1965 c 145.

11.99.010 Effective date of title. This title shall take effect and be in force on and after the first day of July, 1967; except that sections 11.44.055, 11.44.065, 11.44.070 and 11.44.080 shall take effect on July 1, 1965, and the repeal of the following acts or parts of acts as listed in section 11.99.015 shall also take effect on July 1, 1965, to wit: In subsection (10), section 1444, Code of 1881; in subsection (47), section 95, chapter 156, Laws of 1917; in subsection (48), section 1, chapter 23, Laws of 1919; in subsection (64), section 1, chapter 112, Laws of 1929; in subsection (66), section 123, chapter 180, Laws of 1935; in subsection (71), section 8, chapter 202, Laws of 1939; and in subsection (111), section 83.16.040, chapter 15, Laws of 1961. Except as above provided the procedures herein prescribed shall govern all proceedings in probate brought after the effective date of the title and, also, all further procedure and proceedings in probate then pending, except to the extent that in the opinion of the court their application in particular proceedings or part thereof would not be feasible or would work injustice, in which event the former procedure shall apply. [1965 c 145 § 11.99.010.]

11.99.013 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1965 c 145 § 11.99.013.]

11.99.015 Repeal. See 1965 c 145 § 11.99.015.

11.99.020 Savings clause—Rights not affected. No act done in any proceeding commenced before this title takes effect and no accrued right shall be impaired by its provisions. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute in force before this title takes effect, such provisions shall remain in force and be deemed a part of this code with respect to such right. [1965 c 145 § 11.99.020.]

11.99.030 Severability—1965 c 145. If any provisions of this title or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and, to this end, provisions of this title are declared to be severable. [1965 c 145 § 11.99.030.]

Chapter 11.100
INVESTMENT OF TRUST FUNDS

Sections

11.100.010	Provisions of chapter to control.
11.100.015	Guardians, guardianships and funds are subject to chapter.
11.100.020	Management of trust assets by fiduciary.
11.100.023	Authority of fiduciary to invest in certain enterprises.
11.100.025	Marital deduction interests.
11.100.030	Investment in savings accounts—Requirements.
11.100.035	Investments in securities of certain investment trusts.
11.100.037	Investment or distribution of funds held in fiduciary capacity—Deposit in other departments authorized—Collateral security required, exception.
11.100.040	Court may permit deviation from terms of trust instrument.
11.100.050	Scope of chapter.
11.100.060	Fiduciary may hold and retain trust property—Investments—Liability.
11.100.070	Meaning of terms in trust instrument.
11.100.090	Dealings with self or affiliate.
11.100.120	Use of trust funds for life insurance.
11.100.130	Person to whom power or authority to direct or control acts of trustee or investments of a trust is conferred deemed a fiduciary—Liability.
11.100.140	Notice and procedure for nonroutine transactions.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.100.010 Provisions of chapter to control. Any corporation, association, or person handling or investing trust funds as a fiduciary shall be governed in the handling and investment of such funds as in this chapter specified. [1985 c 30 § 63. Prior: 1955 c 33 § 30.24.010; prior: 1947 c 100 § 1; Rem. Supp. 1947 § 3255–10a. Formerly RCW 30.24.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.015 Guardians, guardianships and funds are subject to chapter. In addition to other fiduciaries, a guardian of any estate is a fiduciary within the meaning of this chapter; and in addition to other trusts, a guardianship of any estate is a trust within the meaning of this chapter; and in addition to other trust funds, guardianship funds are trust funds within the meaning of this chapter. [1985 c 30 § 64. Prior: 1955 c 33 § 30.24.015; prior: 1951 c 218 § 1. Formerly RCW 30.24.015.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.020 Management of trust assets by fiduciary. (1) A fiduciary is authorized to acquire and retain every kind of property. In acquiring, investing, reinvesting, exchanging, selling and managing property for the benefit of another, a fiduciary, in determining the prudence of a particular investment, shall give due consideration to the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying such total asset management approach, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to

speculation but in regard to the permanent disposition of their funds, and if the fiduciary has special skills or is named trustee on the basis of representations of special skills or expertise, the fiduciary is under a duty to use those skills.

(2) Except as may be provided to the contrary in the instrument, the following are among the factors that should be considered by a fiduciary in applying this total asset management approach:

- (a) The probable income as well as the probable safety of their capital;
- (b) Marketability of investments;
- (c) Length of the term of the investments;
- (d) Duration of the trust;
- (e) Liquidity needs;
- (f) Requirements of the beneficiary or beneficiaries;
- (g) Other assets of the beneficiary or beneficiaries, including earning capacity; and
- (h) Effect of investments in increasing or diminishing liability for taxes.

Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment specifically including but not by way of limitation, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion, and intelligence acquire for their own account. [1985 c 30 § 65. Prior: 1984 c 149 § 97; 1955 c 33 § 30.24.020; prior: 1947 c 100 § 2; Rem. Supp. 1947 § 3255–10b. Formerly RCW 30.24.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Endowment care funds to be invested in accordance with RCW 11.100.020: RCW 68.44.030.

11.100.023 Authority of fiduciary to invest in certain enterprises. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to invest in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly therein or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in such enterprises. The aggregate amount of investments held by a fiduciary under the authority of this section valued at cost shall not exceed ten percent of the net fair market value of the trust corpus, including investments made under the authority of this section valued at fair market value, immediately after any such investment is made. Any investment which would have been authorized by this section if in force at the time the investment was made is hereby authorized. [1985 c 30 § 66. Prior: 1984 c 149 § 98.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Securities in default ineligible for investment: RCW 30.24.080.

11.100.025 Marital deduction interests. Notwithstanding RCW 11.98.070(21)(a), 11.100.060, or any other statutory provisions to the contrary, with respect to trusts which require by their own terms or by operation of law that all income be paid at least annually to the spouse of the trust's creator, which do not provide that on the termination of the income interest that the entire then remaining trust estate be paid to the estate of the spouse of the trust's creator, and for which a federal estate or gift tax marital deduction is claimed, any investment in or retention of unproductive property is subject to a power in the spouse of the trust's creator to require either that any such asset be made productive, or that it be converted to productive assets within a reasonable period of time unless the instrument creating the interest provides otherwise. [1985 c 30 § 67. Prior: 1984 c 149 § 99.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Securities in default ineligible for investment: RCW 30.24.080.

11.100.030 Investment in savings accounts—Requirements. A corporation doing a trust business may invest trust funds in savings accounts with itself to the extent that deposits are insured by an agency of the federal government. Additional trust funds may be so invested by the corporation only if it first sets aside under the control of its trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited. [1985 c 30 § 68. Prior: 1984 c 149 § 101; 1967 c 133 § 3; 1955 c 33 § 30.24.030; prior: 1947 c 100 § 3; Rem. Supp. 1947 § 3255-10c. Formerly RCW 30.24.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.035 Investments in securities of certain investment trusts. Within the standards of judgment and care established by law, and subject to any express provisions or limitations contained in any particular trust instrument, guardians, trustees and other fiduciaries, whether individual or corporate, are authorized to acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the federal investment company act of 1940 as now or hereafter amended. [1985 c 30 § 69. Prior: 1955 c 33 § 30.24.035; prior: 1951 c 132 § 1. Formerly RCW 30.24.035.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.037 Investment or distribution of funds held in fiduciary capacity—Deposit in other departments authorized—Collateral security required, exception. Funds held by a bank or trust company in a fiduciary capacity awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. These funds, including managing agency accounts, may, unless prohibited by the instrument creating the trust or by other statutes of this state, be deposited in the commercial or savings or other department of the bank or trust company, only if the bank or trust company first sets aside under control of the trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of the funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by an agency of the federal government. [1985 c 30 § 70. Prior: 1984 c 149 § 104; 1967 c 133 § 4. Formerly RCW 30.24.037.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.040 Court may permit deviation from terms of trust instrument. Nothing contained in this chapter shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement, or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale, or management of fiduciary property. [1985 c 30 § 71. Prior: 1955 c 33 § 30.24.040; prior: 1947 c 100 § 4; Rem. Supp. 1947 § 3255-10d. Formerly RCW 30.24.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.050 Scope of chapter. The provisions of this chapter govern fiduciaries acting under wills, agreements, court orders, and other instruments effective before or after January 1, 1985. [1985 c 30 § 72. Prior: 1984 c 149 § 107; 1955 c 33 § 30.24.050; prior: 1947 c 100 § 5; Rem. Supp. 1947 § 3255-10e. Formerly RCW 30.24.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.060 Fiduciary may hold and retain trust property—Investments—Liability. Subject to express provisions to the contrary in the trust instrument, any fiduciary may hold and retain any real or personal

property received into or acquired by the trust from any source. Except as to trust property acquired for consideration, a fiduciary may hold and retain any such property without need for diversification as to kinds or amount and whether or not the property is income producing.

Any fiduciary may invest funds held in trust under an instrument creating the trust in any manner and in any investment or in any class of investments authorized by the instrument.

The investments described in this section are permissible even though the securities or other property are not permitted under other provisions of this chapter, and even though the securities may be securities issued by the corporation that is the fiduciary.

A fiduciary is not liable for any loss incurred with respect to any investment held under the authority of or pursuant to this section if that investment was permitted when received or when the investment was made by the fiduciary, and if the fiduciary exercises due care and prudence in the disposition or retention of any such investment. [1985 c 30 § 73. Prior: 1984 c 149 § 108.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.070 Meaning of terms in trust instrument.

The terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of RCW 11.100.020. [1985 c 30 § 74. Prior: 1984 c 149 § 110; 1955 c 33 § 30.24.070; prior: 1947 c 100 § 7; 1941 c 41 § 13; Rem. Supp. 1947 § 3255-13. Formerly RCW 30.24.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.090 Dealings with self or affiliate. Unless the instrument creating the trust expressly provides to the contrary, 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). [1985 c 30 § 75. Prior: 1984 c 149 § 111; 1955 c 33 § 30.24.090; prior: 1947 c 100 § 9; 1941 c 41 § 17; Rem. Supp. 1947 § 3255-17. Formerly RCW 30.24.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.100.120 Use of trust funds for life insurance.

Subject to the standards of RCW 11.100.020, a fiduciary is authorized to use trust funds to acquire life insurance upon the life of any beneficiary or upon the life of another in whose life such beneficiary has an insurable

interest. [1985 c 30 § 76. Prior: 1984 c 149 § 112; 1973 1st ex.s. c 89 § 1. Formerly RCW 30.24.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Insurable interest, guardian, trustee or other fiduciary: RCW 48.18.030(3)(d).

11.100.130 Person to whom power or authority to direct or control acts of trustee or investments of a trust is conferred deemed a fiduciary—Liability. Whenever power or authority to direct or control the acts of a trustee or the investments of a trust is conferred directly or indirectly upon any person other than the designated trustee of the trust, such person shall be deemed to be a fiduciary and shall be liable to the beneficiaries of said trust and to the designated trustee to the same extent as if he were a designated trustee in relation to the exercise or nonexercise of such power or authority. [1985 c 30 § 77. Prior: 1973 1st ex.s. c 89 § 2. Formerly RCW 30.24.130.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.100.140 Notice and procedure for nonroutine transactions. (1) A trustee shall not enter into a significant nonroutine transaction in the absence of a compelling circumstance without:

(a) Providing the written notice called for by subsection (4) of this section; and

(b) If the significant nonroutine transaction is of the type described in subsection (2)(a) of this section, obtaining an independent appraisal, or selling in an open-market transaction.

(2) A "significant nonroutine transaction" for the purpose of this section is defined as any of the following:

(a) Any sale, option, lease, or other agreement, binding for a period of ten years or more, dealing with any interest in real estate other than real estate purchased by the trustee or a vendor's interest in a real estate contract, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(b) The sale of any item or items of tangible personal property, including a sale of precious metals or investment gems other than precious metals or investment gems purchased by the trustee, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(c) The sale of shares of stock in a corporation whose stock is not traded on the open market, if the stock in question constitutes more than twenty-five percent of the corporation's outstanding shares; or

(d) The sale of shares of stock in any corporation where the stock to be sold constitutes a controlling interest, or would cause the trust to no longer own a controlling interest, in the corporation.

(3) A "compelling circumstance" for the purpose of this section is defined as a condition, fact, or event that

the trustee believes necessitates action without compliance with this section in order to avoid immediate and significant detriment to the trust. If faced with a compelling circumstance, the trustee shall give the notice called for in subsection (4) of this section and may thereafter enter into the significant nonroutine transaction without waiting for the expiration of the twenty-day period.

(4) The written notice required by this section shall set forth such material facts as necessary to advise properly the recipient of the notice of the nature and terms of the intended transaction. This notice shall be given to the trustor, if living, to each person who is eighteen years or older and to whom income is presently payable or for whom income is presently being accumulated for distribution as income and for whom an address is known to the trustee, and to the attorney general if the trust is a charitable trust under RCW 11.110.020. The notice shall be mailed by United States certified mail, postage prepaid, return receipt requested, to the recipient's last-known address, or may be personally served, at least twenty days prior to the trustee entering into any binding agreements.

(5) The trustor, if living, or persons entitled to notice under this section may, by written instrument, waive any requirement imposed by this section.

(6) Except as required by this section for nonroutine transactions defined in subsection (2) of this section, a trustee shall not be required to notify beneficiaries of a trust of the trustee's intended action, to obtain an independent appraisal, or to sell in an open-market transaction.

(7) Any person dealing with a trustee may rely upon the trustee's written statement that the requirements of this section have been met for a particular transaction. If a trustee gives such a statement, the transaction shall be final unless the party relying on the statement has actual knowledge that the requirements of this section have not been met.

(8) The requirements of this section, and any similar requirements imposed by prior case law, shall not apply to personal representatives or to those trusts excluded from the definition of express trusts under RCW 11.98.009. [1985 c 30 § 78. Prior: 1984 c 149 § 114.]

~~Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.~~

~~Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.~~

Chapter 11.102

COMMON TRUST FUNDS

Sections

11.102.010	Funds authorized—Investment—Rules and regulations—"Affiliated" defined.
11.102.020	Accounting.
11.102.030	Applicability of chapter.
11.102.040	Interpretation of chapter.
11.102.050	Chapter designated "uniform common trust fund act".

11.102.010 Funds authorized—Investment—Rules and regulations—"Affiliated" defined. Any bank or trust company qualified to act as fiduciary in this state, or in any other state if affiliated with a bank or trust company qualified to act as fiduciary in this state, may establish common trust funds for the purpose of furnishing investments to itself and its affiliated or related bank or trust company as fiduciary, or to itself and its affiliated or related bank or trust company, and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to such investment: *Provided*, That any bank or trust company qualified to act as fiduciary in the state of its charter, which is not a member of the federal reserve system, shall, in the operation of such common trust fund, comply with the rules and regulations as made from time to time by the supervisor of banking in the state where chartered and in Washington the supervisor is hereby authorized and empowered to make such rules and regulations as he may deem necessary and proper in the premises.

"Affiliated" as used in this section means two or more banks or trust companies:

(1) In which twenty-five percent or more of their voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, are directly or indirectly owned or controlled by a holding company; or

(2) In which the election of a majority of the directors is controlled in any manner by a holding company. [1985 c 30 § 79. Prior: 1979 c 105 § 1; 1955 c 33 § 30.28.010; prior: 1943 c 55 § 1; Rem. Supp. 1943 § 3388. Formerly RCW 30.28.010.]

~~Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.~~

11.102.020 Accounting. Unless ordered by a court of competent jurisdiction the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the superior court, secure approval of such an accounting on such conditions as the court may establish. [1985 c 30 § 80. Prior: 1955 c 33 § 30.28.020; prior: 1943 c 55 § 2; Rem. Supp. 1943 § 3388-1. Formerly RCW 30.28.020.]

~~Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.~~

11.102.030 Applicability of chapter. This chapter shall apply to fiduciary relationships in existence on June 11, 1943, or thereafter established. [1985 c 30 § 81. Prior: 1955 c 33 § 30.28.030; prior: 1943 c 55 § 7; Rem. Supp. 1943 § 3388-6. Formerly RCW 30.28.030.]

~~Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.~~

11.102.040 Interpretation of chapter. This chapter shall be so interpreted and construed to effectuate its general purpose to make uniform the laws of those states which enact it. [1985 c 30 § 82. Prior: 1955 c 33 § 30-.28.040; prior: 1943 c 55 § 3; Rem. Supp. 1943 § 3388-2. Formerly RCW 30.28.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.102.050 Chapter designated "uniform common trust fund act". This chapter may be cited as the uniform common trust fund act. [1985 c 30 § 83. Prior: 1955 c 33 § 30.28.050; prior: 1943 c 55 § 4; Rem. Supp. 1943 § 3388-3. Formerly RCW 30.28.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Chapter 11.104

WASHINGTON PRINCIPAL AND INCOME ACT

Sections

11.104.010	Definitions.
11.104.020	Duty of trustee as to receipts and expenditures.
11.104.030	Income—Principal—Charges.
11.104.040	When right to income arises—Apportionment of income.
11.104.050	Income earned during administration of a decedent's estate.
11.104.060	Corporate distribution.
11.104.070	Bond premium and discount.
11.104.080	Trade, business and farming operations.
11.104.090	Disposition of receipts from natural resources.
11.104.100	Timber.
11.104.110	Other property subject to depletion.
11.104.120	Underproductive property—Definition.
11.104.130	Charges against income and principal.
11.104.900	Application of chapter.
11.104.901	Application of RCW 11.104.010 through 11.104.130 as of January 1, 1985.
11.104.910	Short title.
11.104.920	Severability—1971 c 74.
11.104.930	Section headings not part of law.
11.104.940	Effective date—1971 c 74.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.104.010 Definitions. As used in this chapter:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income;

(2) "Inventory value" means the cost of property purchased by the trustee and the cost or adjusted basis for federal income tax purposes of other property at the time it became subject to the trust, but in the case of a trust asset that is included on any death tax return the trustee may, but need not, use the value finally determined for the purposes of the federal estate tax if applicable, otherwise for another estate or inheritance tax;

(3) "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal. [1985 c 30 § 84. Prior: 1984 c 149 § 116; 1971 c 74 § 1.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.020 Duty of trustee as to receipts and expenditures. (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(a) In accordance with the terms of the trust instrument, notwithstanding contrary provisions of this chapter;

(b) In the absence of any contrary terms of the trust instrument, in accordance with the provisions of this chapter; or

(c) If neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which persons of prudence, discretion, and intelligence would act in the management of their own affairs.

(2) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation consistent with the instrument but that is contrary to a provision of this chapter. [1985 c 30 § 85. Prior: 1984 c 149 § 117; 1971 c 74 § 2.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.030 Income—Principal—Charges. (1) Income is the return in money or property derived from the use of principal, including:

(a) Rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) Interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in RCW 11.104.070 on bond premiums and bond discounts;

(c) Income earned during administration of a decedent's estate as provided in RCW 11.104.050;

(d) Corporate distributions as provided in RCW 11.104.060;

(e) Increment in value on bonds or other obligations issued at a discount as provided in RCW 11.104.070;

(f) Receipts from business and farming operations as provided in RCW 11.104.080;

(g) Receipts from disposition of natural resources as provided in RCW 11.104.090 and 11.104.100;

(h) Receipts from other principal subject to depletion as provided in RCW 11.104.110; and

(i) Receipts from disposition of underproductive property as provided in RCW 11.104.120.

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it

is held in trust eventually to be delivered to a remainderman while the return on or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(a) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(b) Proceeds of property taken on eminent domain proceedings;

(c) Proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in RCW 11.104.060;

(e) Receipts from the disposition of corporate securities, bonds, or other obligations for the payment of money as provided in RCW 11.104.070;

(f) Royalties and other receipts from disposition of natural resources as provided in RCW 11.104.090 and 11.104.100;

(g) Receipts from other principal subject to depletion as provided in RCW 11.104.110;

(h) Any profit resulting from any change in the form of principal except as provided in RCW 11.104.120 on underproductive property;

(i) Receipts from disposition of underproductive property as provided in RCW 11.104.120; and

(j) Any allowances for depreciation established under RCW 11.104.080 and 11.104.130(1)(b).

(3) After determining income and principal in accordance with the terms of the trust instrument or of this chapter, the trustee shall charge to income or principal expenses and other charges as provided in RCW 11.104.130. [1985 c 30 § 86. Prior: 1984 c 149 § 118; 1971 c 74 § 3.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.040 When right to income arises—Apportionment of income. (1) An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(2) Subject to subsection (2) (a) and (b) of this section, in the administration of a decedent's estate or of an asset becoming subject to a trust by reason of a will all receipts paid on or before the date of death of the testator are principal and all receipts paid after that date are income.

(a) Notwithstanding the foregoing, receipts due but not paid on or before the date of death of the testator are principal; and

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on or before the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

(3) In all other cases, any receipt from an income producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

(4) On the termination of an income beneficiary's income interest, if such interest was not subject to any discretion to withhold, accumulate, or distribute income to or for any other beneficiary, then income on hand but undistributed belongs to that income beneficiary or that beneficiary's estate, except that if the income beneficiary is the surviving spouse of the testator or grantor of the trust and the income interest otherwise qualifies for the marital deduction on any federal estate or gift tax return, then all accrued but undistributed income is subject to a testamentary general power of appointment in the surviving spouse, exercisable as provided in RCW 11.95.060 by specific reference to this statutory provision, to appoint the same to himself or herself, or to his or her estate. All undistributed income not disposed of under the foregoing provisions of this subsection shall be held and distributed as part of the next eventual interest or estate in accordance with the provisions of the will or trust relating to such next eventual interest or estate.

(5) Corporate distributions to stockholders shall be treated as due on the date fixed by the corporation for determination of stockholders of record entitled to distribution, or if no date is fixed, on the date of declaration of the distribution by the corporation. [1985 c 30 § 87. Prior: 1984 c 149 § 119; 1971 c 74 § 4.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.050 Income earned during administration of a decedent's estate. (1) Unless the will or the court otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest due at death, and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate, except that the principal shall be reimbursed from income for any increase in estate taxes due to the use of administration expenses that were paid from principal as deductions for income tax purposes.

(2) Unless the will or the court otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trust under this chapter and distributed as follows:

(a) To beneficiaries of any specific bequest, legacy, or devise, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and appropriate portions of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration;

(b) Subject to (c) of this subsection, to all other beneficiaries, including trusts, the balance of the income less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, plus the balance of all income accrued since the death of the testator, and less the balance of all taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of the fair value, provided, that the amount of income earned before the date or dates of payment of any estate or inheritance tax shall be distributed to those beneficiaries in proportion to their interests immediately before the making of those payments; and

(c) Pecuniary bequests not in trust do not receive income, and, subject to the provisions of RCW 11.56.160, all such bequests, including those to the decedent's surviving spouse, are not allocated any share of the expenses identified in subsection (2)(b) of this section.

(3) Any income with respect to which the income taxes have been paid which is payable in whole or in part to one or more charitable or other tax exempt organizations, and for which an income tax charitable deduction was allowable, shall be allocated among the distributees in such manner that the diminution in such taxes resulting from the charitable deduction allowable will inure to the benefit of the charitable or tax exempt organization giving rise to the deduction.

(4) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust. [1985 c 30 § 88. Prior: 1984 c 149 § 120; 1971 c 74 § 5.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.060 Corporate distribution. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the stock became a part of the trust corpus or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(a) A call of shares;

(b) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1), (2), and (3) of this section all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3) of this section, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this chapter concerning the source or character of dividends or distributions of corporate assets. [1985 c 30 § 89. Prior: 1984 c 149 § 121; 1971 c 74 § 6.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.070 Bond premium and discount. (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. The trustee shall not provide for amortization of bond premiums or for accumulation of discount except where the trust instrument provides otherwise. If the instrument provides for amortization of premiums or accumulation of discount, but not both, and is silent as to one, it is the duty of the trustee to amortize premiums and accumulate discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money bearing no fixed rate of interest or payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. Except as otherwise provided in RCW 11.104.040(4), the increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available,

when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized. [1985 c 30 § 90. Prior: 1984 c 149 § 122; 1971 c 74 § 7.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.080 Trade, business and farming operations.

If a trustee uses any part of the principal in the operation of a trade, business or farming operation, the proceeds and losses of the business shall be allocated in accordance with what is reasonable and equitable in view of the interest of those entitled to income as well as those entitled to principal, and in view of the manner in which persons of prudence, discretion, and intelligence would act in the management of their own affairs in accordance with RCW 11.104.020. The operation of real estate for rent is considered a business. [1985 c 30 § 91. Prior: 1984 c 149 § 123; 1971 c 74 § 8.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.090 Disposition of receipts from natural resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income;

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income; and

(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. Receipts shall be allocated to income or apportioned between income and principal at the discretion of the trustee, but in no event may principal be allocated more than that portion of the gross receipts that is deductible for federal income tax purposes during that year. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(2) If a trustee, on January 1, 1972, held an item of depletable property of a type specified in this section, the trustee shall allocate receipts from the property in the manner used before January 1, 1972, but as to all depletable property acquired after January 1, 1972 by an existing or new trust, the method of allocation provided herein shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses. [1985 c 30 § 92. Prior: 1984 c 149 § 124; 1971 c 74 § 9.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.100 Timber. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with RCW 11.104.020. [1971 c 74 § 10.]

11.104.110 Other property subject to depletion. Except as provided in RCW 11.104.090 and 11.104.100, if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of five percent per year of its inventory value, are income, and the balance is principal. [1971 c 74 § 11.]

11.104.120 Underproductive property—Definition.

(1) Except as provided in subsection (5) of this section, a portion of the net proceeds of sale of any part of principal which is underproductive shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received, less expenses, including any capital gains tax incurred in disposition, and less any carrying charges paid while the property was underproductive.

(2) The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year while the property was underproductive, would have produced the net proceeds. This sum, plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any use of the property by the income beneficiary, is income, and the balance is principal.

(3) Except as otherwise provided in RCW 11.104.040(4), an income beneficiary is entitled to delayed income under this section as if it accrued from day to day during the time he was a beneficiary.

(4) If principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages (for example, realty acquired by or in lieu of foreclosure), the income beneficiary is entitled to the net income from any property or obligation into which the original principal is converted

while the substituted property or obligation is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made.

(5) This section does not apply to underproductive property that the trustee is authorized to retain by the terms of the controlling document or by law; that is received into or acquired by the trust from any source, except property which is purchased by the fiduciary in administering the trust; the retention of which has been authorized in writing by the income beneficiaries; or the retention of which would be considered proper under the standard set forth in RCW 11.100.020.

(6) As used in this section, the term "underproductive property" refers to any property that has not produced an average net income of at least one percent per year (simple interest) of its inventory value for more than a year (including as income the value of any use of the property by the income beneficiary). [1985 c 30 § 93. Prior: 1984 c 149 § 125; 1971 c 74 § 12.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.130 Charges against income and principal.

(1) The following charges shall be made against income:

(a) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

(b) If the trustee deems the same to be appropriate under the standards in RCW 11.104.020(1)(c), a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles; no allowance shall be made for depreciation of that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on January 1, 1972 for which the trustee is not then making an allowance for depreciation;

(c) One-half of court costs, attorney's fees, and other fees on periodic accountings, unless the court directs otherwise;

(d) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) One-half of the trustee's regular compensation, whether based on a percentage of principal or income;

(f) All expenses reasonably incurred for current management of principal and application of income; and

(g) Any tax levied upon receipts allocated to income under this chapter or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and

withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) Trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e) of this section, special compensation of trustees, expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) Charges not provided for in subsection (1) of this section, including the cost of investing and reinvesting principal, the payments on principal of an indebtedness (including a mortgage amortized by periodic payments of principal), expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but, a trustee may establish an allowance for depreciation out of income to the extent permitted by subsection (1)(b) of this section and by RCW 11.104.080;

(d) Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the tax authority; and

(e) If an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including interest, whether on account of direct or indirect borrowing for the purpose of paying those taxes, and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under RCW 11.104-.040. [1985 c 30 § 94. Prior: 1984 c 149 § 126; 1971 c 74 § 13.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.104.900 Application of chapter. Except as specifically provided in the trust instrument or the will or in this chapter, this chapter shall apply to any receipt or expense received or incurred on or after January 1, 1972 by the estate of any decedent dying on or after January 1, 1972 or by any trust whether established before or after January 1, 1972 and whether the asset involved was acquired by the trustee before or after January 1, 1972. [1971 c 74 § 14.]

11.104.901 Application of RCW 11.104.010 through 11.104.130 as of January 1, 1985. RCW 11.104.010 through 11.104.090, 11.104.120, and 11.104.130, as amended and reenacted in 1985, shall apply as of January 1, 1985. [1985 c 30 § 142.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.104.910 Short title. This chapter may be cited as the Washington Principal and Income Act. [1971 c 74 § 15.]

11.104.920 Severability—1971 c 74. 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 which can be given effect without the invalid provision or application and to this end the provisions of this act are severable. [1971 c 74 § 16.]

11.104.930 Section headings not part of law. Section headings, as found in this 1971 amendatory act do not constitute any part of the law. [1971 c 74 § 18.]

11.104.940 Effective date—1971 c 74. This act shall take effect on January 1, 1972. [1971 c 74 § 19.]

Chapter 11.106

TRUSTEES' ACCOUNTING ACT

Sections

11.106.010	Scope of chapter—Exceptions.
11.106.020	Trustee's annual statement.
11.106.030	Intermediate and final accounts—Contents—Filing.
11.106.040	Account—Court may require—Petition.
11.106.050	Account filed—Return day—Notice.
11.106.060	Account filed—Objections—Appointment of guardians ad litem—Representatives.
11.106.070	Court to determine accuracy, validity—Decree.
11.106.080	Effect of decree.
11.106.090	Appeal from decree.
11.106.100	Waiver of accounting by beneficiary.
11.106.110	Modification under chapter 11.97 RCW—How constituted.

11.106.010 Scope of chapter—Exceptions. This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the superior court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives. [1985 c 30 § 95. Prior: 1984 c 149 § 128; 1955 c 33 § 30.30.010; prior: 1951 c 226 § 10. Formerly RCW 30.30.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.020 Trustee's annual statement. The trustee or trustees appointed by any will, deed, or agreement executed shall mail or deliver at least annually to each

adult income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary shall furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides. [1985 c 30 § 96. Prior: 1984 c 149 § 129; 1955 c 33 § 30.30.020; prior: 1951 c 226 § 2. Formerly RCW 30.30.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

11.106.030 Intermediate and final accounts—Contents—Filing. In addition to the statement required by RCW 11.106.020 any such trustee or trustees whenever it or they so desire, may file in the superior court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) The period covered by the account;
- (2) The total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;
- (3) An itemized statement of all principal funds received and disbursed during such period;
- (4) An itemized statement of all income received and disbursed during such period, unless waived;
- (5) The balance of such principal and income remaining at the close of such period and how invested;
- (6) The names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;
- (7) A description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

After the time for termination of the trust has arrived, the trustee or trustees may also file a final account in similar manner. [1985 c 30 § 97. Prior: 1984 c 149 § 130; 1955 c 33 § 30.30.030; prior: 1951 c 226 § 3. Formerly RCW 30.30.030.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.040 Account—Court may require—Petition. Upon the petition under chapter 11.96 RCW of any settlor or of any beneficiary of such a trust after due notice as provided in chapter 11.96 RCW to the trustee the superior court in the county where the trustee or one of the trustees resides may direct the trustee or trustees to file in the court an account at any time after one year from the day on which such a report was last filed, or if none, then after one year from the inception of the trust. [1985 c 30 § 98. Prior: 1984 c 149 § 131; 1955 c 33 § 30.30.040; prior: 1951 c 226 § 4. Formerly RCW 30.30.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.050 Account filed—Return day—Notice. When any account has been filed pursuant to RCW 11.106.030 or 11.106.040, the clerk of the court where filed shall fix a return day therefor as provided in RCW 11.96.090 and issue a notice. The notice shall state the time and place for the return date, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle the account, and that any objections or exceptions to the account must be filed with the clerk of the court on or before the return date. The notice shall be given as provided for notices under RCW 11.96.100 or 11.96.110. [1985 c 30 § 99. Prior: 1984 c 149 § 132; 1955 c 33 § 30.30.050; prior: 1951 c 226 § 5. Formerly RCW 30.30.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.060 Account filed—Objections—Appointment of guardians ad litem—Representatives. Upon or before the return date any beneficiary of the trust may file the beneficiary's written objections or exceptions to the account filed or to any action of the trustee or trustees set forth in the account. The court shall appoint guardians ad litem as provided in RCW 11.96.180 and the court may allow representatives to be appointed under RCW 11.96.110 and 11.96.170 to represent the persons listed in those sections. [1985 c 30 § 100. Prior: 1984 c 149 § 133; 1977 ex.s. c 80 § 31; 1955 c 33 § 30.30.060; prior: 1951 c 226 § 6. Formerly RCW 30.30.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

11.106.070 Court to determine accuracy, validity—Decree. Upon the return date or at some later date fixed by the court if so requested by one or more of the parties, the court without the intervention of a jury and after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth in the account including the purchase, retention, and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the account or any part of it, and surcharging the trustee or trustees for all losses, if any, caused by negligent or wilful breaches of trust. [1985 c 30 § 101. Prior: 1984 c 149 § 134; 1955 c 33 § 30.30.070; prior: 1951 c 226 § 7. Formerly RCW 30.30.070.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.080 Effect of decree. The decree rendered under RCW 11.106.070 shall be deemed final, conclusive, and binding upon all the parties interested including all incompetent, unborn, and unascertained beneficiaries of the trust subject only to the right of appeal under RCW 11.106.090. [1985 c 30 § 102. Prior: 1984 c 149 § 135; 1955 c 33 § 30.30.080; prior: 1951 c 226 § 8. Formerly RCW 30.30.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.090 Appeal from decree. The decree rendered under RCW 11.106.070 shall be a final order from which any party in interest may appeal as in civil actions to the supreme court or the court of appeals of the state of Washington. [1985 c 30 § 103. Prior: 1984 c 149 § 136; 1971 c 81 § 80; 1955 c 33 § 30.30.090; prior: 1951 c 226 § 9. Formerly RCW 30.30.090.]

Rules of court: Method of appellate review superseded by RAP 2.2(a)(3), 18.22.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.100 Waiver of accounting by beneficiary. Any adult beneficiary entitled to an accounting under either RCW 11.106.020 or 11.106.030 may waive such an accounting by a separate instrument delivered to the trustee. [1985 c 30 § 104. Prior: 1984 c 149 § 137; 1955 c 33 § 30.30.100; prior: 1951 c 226 § 11. Formerly RCW 30.30.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.106.110 Modification under chapter 11.97 RCW—How constituted. This chapter is declared to be of similar import to the uniform trustees' accounting act. Any modification under chapter 11.97 RCW, including waiver, of the requirements of this chapter in any will, deed, or agreement heretofore or hereafter executed shall be given effect whether the waiver refers to the uniform trustees' accounting act by name or other reference or to any other act of like or similar import. [1985 c 30 § 105. Prior: 1984 c 149 § 138; 1955 c 33 § 30.30.110; prior: 1951 c 226 § 12. Formerly RCW 30.30.110.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.108

TRUST GIFT DISTRIBUTION

Sections

11.108.010	Definitions.
11.108.020	Marital deduction gift—Compliance with internal revenue code—Intent.
11.108.030	Pecuniary bequests—Valuation of assets if distribution other than money.
11.108.040	Construction of certain marital deduction formula bequests.
11.108.050	Marital deduction gift in trust.
11.108.060	Marital deduction gift—Six months' survivorship requirement.
11.108.900	Application of chapter.

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

(1) The term "pecuniary bequest" means a gift in a governing instrument which either is expressly stated as a fixed dollar amount or is a gift of a dollar amount determinable by the governing instrument, and a gift expressed in terms of a "sum" or an "amount," unless the context dictates otherwise, is a gift of a dollar amount.

(2) The term "marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the internal revenue code.

(3) The term "maximum marital deduction" means the maximum amount qualifying for the marital deduction.

(4) The term "marital deduction gift" means a gift intended to qualify for the marital deduction.

(5) The term "governing instrument" includes a will and codicils, irrevocable, and revocable trusts.

(6) "Fiduciary" means trustee or personal representative. Reference to a fiduciary in the singular includes the plural where the context requires.

(7) References to the "internal revenue code" are to the United States internal revenue code of 1954, as it is amended from time to time. Each reference to a section of the internal revenue code refers as well to any subsequent provisions of law enacted in its place.

(8) The term "gift" refers to all legacies, devises, and bequests made in a governing instrument. [1985 c 30 § 106. Prior: 1984 c 149 § 140.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.020 Marital deduction gift—Compliance with internal revenue code—Intent. If a governing instrument contains a marital deduction gift, the governing instrument, including any power, duty, or discretionary authority given to the fiduciary, shall be construed to comply with the marital deduction provisions of the internal revenue code and the regulations thereunder in order to conform to that intent. Whether the governing instrument contains a marital deduction depends upon the intent of the testator at the time the

governing instrument is executed. If the testator has adequately evidenced an intention to make a marital deduction gift, the fiduciary shall not take any action or have any power that may impair that deduction. This section shall neither require nor prohibit a fiduciary from making the election referred to in section 2056(b)(7) of the internal revenue code. [1985 c 30 § 107. Prior: 1984 c 149 § 141.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.030 Pecuniary bequests—Valuation of assets if distribution other than money. (1) If a governing instrument authorizes the fiduciary to satisfy a pecuniary bequest in whole or in part by distribution of property other than money, the assets selected for that purpose shall be valued at their respective fair market values on the date or dates of distribution, unless the governing instrument expressly provides otherwise. If the governing instrument permits the fiduciary to value the assets selected for the distribution as of a date other than the date or dates of distribution, then, unless the governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of that gift as stated in, or determined by, the governing instrument.

(2) A marital deduction gift shall be satisfied only with assets that qualify for those deductions. [1985 c 30 § 108. Prior: 1984 c 149 § 142.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.040 Construction of certain marital deduction formula bequests. (1) If a testator, under the terms of a governing instrument executed prior to September 12, 1981, leaves outright to or in trust for the benefit of that testator's surviving spouse an amount or fractional share of that testator's estate or a trust estate expressed in terms of one-half of that testator's federal adjusted gross estate, or by any other reference to the maximum estate tax marital deduction allowable under federal law without referring, either in that governing instrument or in any codicil or amendment thereto, specifically to the unlimited federal estate tax marital deduction enacted as part of the economic recovery tax act of 1981, such expression shall, unless subsection (2) or (3) of this section applies, be construed as referring to the unlimited federal estate tax marital deduction, and also as expressing such amount or fractional share, as the case may be, in terms of the minimum amount which will cause the least possible amount of federal estate tax to be payable as a result of the testator's death, taking into account other property passing to the surviving spouse that qualifies for the marital deduction, at the value at which it qualifies, and also taking into account all credits against the

federal estate tax, but only to the extent that the use of these credits do not increase the death tax payable.

(2) If this subsection applies to a testator, such expression shall be construed as referring to the estate tax marital deduction allowed by federal law immediately prior to the enactment of the unlimited estate tax marital deduction as a part of the economic recovery tax act of 1981. This subsection applies if subsection (3) of this section does not apply and:

(a) The application of this subsection to the testator will not cause an increase in the federal estate taxes payable as a result of the testator's death over the amount of such taxes which would be payable if subsection (1) of this section applied; or

(b) The testator is survived by a blood or adopted descendant who is not also a blood or adopted descendant of the testator's surviving spouse, unless such person or persons have entered into an agreement under the dispute resolution procedures in chapter 11.96 RCW; or

(c) The testator amended the governing instrument containing such expression after December 31, 1981, without amending such expression to refer expressly to the unlimited federal estate tax marital deduction.

(3) If the governing instrument contains language expressly stating that federal law of a particular time prior to January 1, 1982, is to govern the construction or interpretation of such expression, the expression shall be construed as referring to the marital deduction allowable under federal law in force and effect as of that time.

(4) If subsection (2) or (3) of this section applies to the testator, the expression shall not be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property. If subsection (1) of this section applies to the testator, any provision shall be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property, but only to the extent that such construction does not cause the amount or fractional share left to or for the benefit of the surviving spouse to be reduced below the amount that would pass under subsection (2) or (3) of this section, whichever is applicable.

(5) This section is effective with respect to testators dying after December 31, 1982. [1985 c 30 § 109. Prior: 1984 c 149 § 143.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.050 Marital deduction gift in trust. If a governing instrument indicates the testator's intention to make a marital deduction gift in trust, in addition to the other provisions of this section, each of the following also applies to the trust; provided, however, that such provisions shall not apply to any trust which provides for the entire then remaining trust estate to be paid on the termination of the income interest to the estate of the

spouse of the trust's creator, or to a charitable beneficiary, contributions to which are tax deductible for federal income tax purposes:

(1) The only income beneficiary of a marital deduction trust is the testator's surviving spouse;

(2) The income beneficiary is entitled to all of the trust income until the trust terminates;

(3) The trust income is payable to the income beneficiary not less frequently than annually; and

(4) Except in the case of property that has or would otherwise have qualified for the marital deduction only as the result of an election under section 2056(b)(7) of the internal revenue code, upon termination of the trust, all of the remaining trust assets, including accrued or undistributed income, pass either to the income beneficiary or under the exercise of a general power of appointment granted to the income beneficiary in favor of the income beneficiary's estate or to any other person or entity in trust or outright. The general power of appointment is exercisable by the income beneficiary alone and in all events.

The exercise of the general power of appointment provided in this section shall be done only by the income beneficiary in the manner provided by RCW 11.95.060 by specifically referring to this section. [1985 c 30 § 110. Prior: 1984 c 149 § 144.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.060 Marital deduction gift—Six months' survivorship requirement. If a governing instrument contains a marital deduction gift, whether outright or in trust and whether there is a specific reference to this section, any survivorship requirement expressed in the governing instrument in excess of six months does not apply to property passing under a marital deduction, and in addition, is limited to a six-month period beginning with the testator's death. [1985 c 30 § 111. Prior: 1984 c 149 § 145.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.108.900 Application of chapter. This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96 RCW apply to this chapter. [1985 c 30 § 112. Prior: 1984 c 149 § 146.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 11.110
CHARITABLE TRUSTS

Sections

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 11.110.050 Register of trustees—Establishment and maintenance.
 11.110.060 Instrument establishing trust, inventory of assets, tax exempt status or claim, tax return to be filed.
 11.110.070 Reports of trustee—Filing—Rules and regulations.
 11.110.073 Reports of trustee—Trustees exempt from RCW 11.110.070.
 11.110.075 Trusts not exclusively for charitable purposes—Instrument and information not public—Filings and reporting, when required.
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 11.110.210 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain prohibiting provisions.
 11.110.220 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain certain provisions for distribution.
 11.110.230 Tax Reform Act of 1969, state implementation—Rights, powers, of courts, attorney general, not impaired.
 11.110.240 Tax Reform Act of 1969, state implementation—Construction of references to federal code.
 11.110.250 Tax Reform Act of 1969, state implementation—Application to trust created after June 10, 1971, or amendment to existing trust.
 11.110.260 Tax Reform Act of 1969, state implementation—Severability—RCW 11.110.200 through 11.110.260.
 11.110.270 Tax Reform Act of 1969, state implementation—Not for profit corporations.
 11.110.900 Severability—1967 ex.s. c 53.

11.110.010 Purpose of chapter. The purpose of this chapter is to facilitate public supervision over the administration of public charitable trusts and similar relationships and to clarify and implement the powers and duties of the attorney general with relation thereto. [1985 c 30 § 113. Prior: 1967 ex.s. c 53 § 1. Formerly RCW 19.10.010.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.020 Definitions. When used in this chapter, unless the context otherwise requires:

"Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

"Trustee" means (1) any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; and (2) a corporation formed for the administration of a charitable trust or holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes: *Provided*, That the term "trustee" does not apply to (a) religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes: *Provided*, That if such organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or (b) an educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts. [1985 c 30 § 114. Prior: 1971 ex.s. c 226 § 1; 1967 ex.s. c 53 § 2. Formerly RCW 19.10.020.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.040 Information, documents, and reports are public records—Inspection—Publication. All information, documents, and reports filed with the attorney general under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation: *Provided*, That the attorney general shall withhold from public inspection any trust instrument so filed whose content is not exclusively for charitable purposes. The attorney general may publish, on a periodic or other basis, such information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with him or any other matters relevant to the administration and enforcement of this chapter. [1985 c 30 § 115. Prior: 1967 ex.s. c 53 § 4. Formerly RCW 19.10.040.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.050 Register of trustees—Establishment and maintenance. The attorney general shall establish and maintain a register of trustees as defined in RCW

11.110.020 and, to that end, shall conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources whatever information, copies of instruments, reports, and records are needed, for the establishment and maintenance of the register. [1985 c 30 § 116. Prior: 1984 c 149 § 149; 1967 ex.s. c 53 § 5. Formerly RCW 19.10.050.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.060 Instrument establishing trust, inventory of assets, tax exempt status or claim, tax return to be filed. Every trustee shall file with the attorney general within two months after receiving possession or control of the trust corpus a copy of the instrument establishing his title, powers, or duties, and an inventory of the assets of such charitable trust. In addition, trustees exempted from the provisions of RCW 11.110.070 by RCW 11.110.073 shall file with the attorney general a copy of the declaration of the tax-exempt status or other basis of the claim for such exemption; a copy of the instrument establishing the trustee's title, powers or duties; an inventory of the assets of such trust; and, annually, a copy of each publicly available United States tax or information return or report of the trust which the trustee files with the internal revenue service. The trustees of charitable trusts existing at the time this chapter takes effect or on August 9, 1971, shall comply with this section within six months thereafter. [1985 c 30 § 117. Prior: 1984 c 149 § 150; 1971 ex.s. c 226 § 2; 1967 ex.s. c 53 § 6. Formerly RCW 19.10.060.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.070 Reports of trustee—Filing—Rules and regulations. Except as otherwise provided every trustee subject to this chapter shall file with the attorney general annual reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, in accordance with rules and regulations of the attorney general.

The attorney general shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required, to the ends (1) that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature which will enable him to ascertain whether they are being properly administered, and (2) that periodic

reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The attorney general may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the attorney general after the attorney general has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the attorney general, may be filed as a report required by this section.

The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than one year after any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this act takes effect, the first report, unless the filing thereof is suspended, shall be filed within six months after the effective date of this act. [1985 c 30 § 118. Prior: 1971 ex.s. c 226 § 3; 1967 ex.s. c 53 § 7. Formerly RCW 19.10.070.]

***Reviser's note:** The effective date of this act [1967 ex.s. c 53] was July 30, 1967.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.073 Reports of trustee—Trustees exempt from RCW 11.110.070. The following trustees shall be exempt from the provisions of RCW 11.110.070, but shall file the information required in RCW 11.110.060:

(1) A bank or trust company subject to examination by the supervisor of banking of the state of Washington, the comptroller of the currency of the United States or the board of governors of the federal reserve system; which such bank or trust company is acting as trustee, executor or court-appointed fiduciary: *Provided*, That a bank or trust company which is a co-fiduciary of a trust shall be deemed to be the sole fiduciary of such trust under this section, if the bank or trust company is custodian of the books and records of the trust and has the responsibility for preparing the reports and returns which are filed with the internal revenue service;

(2) The governing body of a nonprofit community foundation or other nonprofit foundation incorporated for charitable purposes, contributions to which are currently allowed as charitable deductions under the United States income tax laws;

(3) The governing body of a hospital which is nonprofit and charitable, other than a hospital initially formed as a trustee pursuant to or in connection with the terms of a charitable trust. [1985 c 30 § 119. Prior: 1984 c 149 § 153; 1971 ex.s. c 226 § 4. Formerly RCW 19.10.073.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.075 Trusts not exclusively for charitable purposes—Instrument and information not public—Filings and reporting, when required. A trust is not exclusively for charitable purposes, within the meaning of RCW 11.110.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW 11.110.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the attorney general and no information as to such noncharitable purpose shall be made public.

Annual reporting of such trusts to the attorney general, as required by RCW 11.110.060 or 11.110.070, shall commence within one year after trust income or principal is authorized or required to be used for a charitable purpose.

When a trust consists of a vested charitable remainder preceded by a life estate, a copy of the instrument shall be filed by the trustee or by the life tenant, within two months after commencement of the life estate.

If the trust instrument contains only contingent gifts or remainders to charitable purposes, no charitable trust shall be deemed created until a charitable gift or remainder is legally vested. The first registration or report of such trust shall be filed within two months after trust income or principal is authorized or required to be used for a charitable purpose. [1985 c 30 § 120. Prior: 1984 c 149 § 154; 1971 ex.s. c 226 § 5. Formerly RCW 19.10.075.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.080 Custodian of court records to furnish copies to attorney general—List of tax exemption applications to be filed. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish within two months after receiving possession or control thereof such copies of papers, records, and files of his office relating to the subject of this chapter as the attorney general shall require.

Every officer, agency, board or commission of this state receiving applications for exemption from taxation of any charitable trust or similar relationship in which the trustee is subject to this chapter shall annually file with the attorney general a list of all applications received during the year. [1985 c 30 § 121. Prior: 1967 ex.s. c 53 § 8. Formerly RCW 19.10.080.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.090 Uniformity of chapter with laws of other states. It is the purpose of this chapter to make uniform the laws of this and other states on the subject of charitable trusts and similar relationships. Recognizing the necessity for uniform application and enforcement of

this chapter, its provisions are hereby declared mandatory and they shall not be superseded by the provisions of any trust instrument or similar instrument to the contrary. [1985 c 30 § 122. Prior: 1967 ex.s. c 53 § 9. Formerly RCW 19.10.090.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.100 Investigations by attorney general authorized—Appearance and production of books, papers, documents, etc., may be required. The attorney general may investigate transactions and relationships of trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear. [1985 c 30 § 123. Prior: 1967 ex.s. c 53 § 10. Formerly RCW 19.10.100.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.110 Order to appear—Effect—Enforcement—Court review. When the attorney general requires the attendance of any person, as provided in RCW 11.110.100, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals by certiorari or other appropriate proceeding. [1985 c 30 § 124. Prior: 1984 c 149 § 157; 1971 c 81 § 64; 1967 ex.s. c 53 § 11. Formerly RCW 19.10.110.]

Rules of court: Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.120 Proceedings to secure compliance and proper trust administration—Attorney general to be

notified of judicial proceedings involving charitable trust—Powers and duties additional. The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW 11.96.100, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it. [1985 c 30 § 125. Prior: 1984 c 149 § 158; 1967 ex.s. c 53 § 12. Formerly RCW 19.10.120.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.125 Violations—Refusal to file reports, perform duties, etc. The wilful refusal by a trustee to make or file any report or to perform any other duties expressly required by this chapter, or to comply with any valid rule or regulation promulgated by the attorney general under this chapter, shall constitute a breach of trust and a violation of this chapter. [1985 c 30 § 126. Prior: 1971 ex.s. c 226 § 6. Formerly RCW 19.10.125.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.130 Violations—Civil action may be prosecuted. A civil action for a violation of this chapter may be prosecuted by the attorney general or by a prosecuting attorney designated by the attorney general. [1985 c 30 § 127. Prior: 1967 ex.s. c 53 § 13. Formerly RCW 19.10.130.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.140 Penalty. Every false statement of material fact knowingly made or caused to be made by any person in any statement or report filed under this chapter and every other violation of this chapter is a gross misdemeanor. [1985 c 30 § 128. Prior: 1967 ex.s. c 53 § 14. Formerly RCW 19.10.140.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.110.200 Tax Reform Act of 1969, state implementation—Application of RCW 11.110.200 through 11.110.260 to certain trusts defined in federal code. RCW 11.110.200 through 11.110.260 shall apply only to

trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code of 1954, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code of 1954, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code of 1954. With respect to any such trust created after December 31, 1969, RCW 11.110.200 through 11.110.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW 11.110.200 through 11.110.260 shall apply only to such trust's federal taxable years beginning after December 31, 1971. [1985 c 30 § 129. Prior: 1984 c 149 § 161; 1971 c 58 § 1. Formerly RCW 19.10.200.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.210 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain prohibiting provisions. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(2) Retaining any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

(4) Making any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954:

Provided, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1954. [1985 c 30 § 130. Prior: 1984 c 149 § 162; 1971 c 58 § 2. Formerly RCW 19.10.210.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.220 Tax Reform Act of 1969, state implementation—Trust instruments deemed to contain certain provisions for distribution. The trust instrument of

each trust to which RCW 11.110.200 through 11.110.260 applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954. [1985 c 30 § 131. Prior: 1984 c 149 § 163; 1971 c 58 § 3. Formerly RCW 19.10.220.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.230 Tax Reform Act of 1969, state implementation—Rights, powers, of courts, attorney general, not impaired. Nothing in RCW 11.110.200 through 11.110.260 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust. [1985 c 30 § 132. Prior: 1984 c 149 § 164; 1971 c 58 § 4. Formerly RCW 19.10.230.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.240 Tax Reform Act of 1969, state implementation—Construction of references to federal code. All references to sections of the Internal Revenue Code of 1954 shall include all amendments thereto adopted by the Congress of the United States on or before January 1, 1985. [1985 c 30 § 133. Prior: 1984 c 149 § 165; 1982 1st ex.s. c 41 § 3; 1971 c 58 § 5. Formerly RCW 19.10.240.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.250 Tax Reform Act of 1969, state implementation—Application to trust created after June 10, 1971, or amendment to existing trust. Nothing in RCW 11.110.200 through 11.110.260 shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW 11.110.210 and 11.110.220 shall have no application to such trust. [1985 c 30 § 134. Prior: 1984 c 149 § 167; 1971 c 58 § 6. Formerly RCW 19.10.250.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.260 Tax Reform Act of 1969, state implementation—Severability—RCW 11.110.200 through 11.110.260. If any provision of RCW 11.110.200 through 11.110.260 or the application thereof to any trust is held invalid, such invalidity shall not affect the

other provisions or applications of RCW 11.110.200 through 11.110.260 which can be given effect without the invalid provision or application, and to this end the provisions of RCW 11.110.200 through 11.110.260 are declared to be severable. [1985 c 30 § 135. Prior: 1984 c 149 § 168; 1971 c 58 § 7. Formerly RCW 19.10.260.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

11.110.270 Tax Reform Act of 1969, state implementation—Not for profit corporations. See RCW 24.40.010 through 24.40.070.

11.110.900 Severability—1967 ex.s. c 53. 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. [1985 c 30 § 136. Prior: 1967 ex.s. c 53 § 15. Formerly RCW 19.10.900.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Title 12

DISTRICT COURTS—CIVIL PROCEDURE

(Formerly: Justice Courts—Civil Procedure)

Chapters

- 12.04 Commencement of actions.**
- 12.08 Pleadings.**
- 12.12 Trial.**
- 12.16 Witnesses and depositions.**
- 12.20 Judgments.**
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Creditors' rights: RCW 62A.8-317.
District and other inferior courts—1961 Act: Chapter 3.30 RCW.
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Ne exeat, jurisdiction of district judge: RCW 7.44.060.
Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.
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Chapter 12.04 COMMENCEMENT OF ACTIONS

Sections

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- 12.04.020 Action to recover debt—Summons—Service.
- 12.04.030 Action by complaint and notice.
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- 12.04.208 Form of undertaking to indemnify constable on claim of property by a third person.

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

12.04.010 Civil actions, how commenced. Civil actions in the several justices' courts of this state may be instituted either by the voluntary appearance and agreement of the parties, by the service of a summons, or by the service upon the defendant of a true copy of the complaint and notice, which notice shall be attached to the copy of the complaint and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six nor more than twenty days from the date of filing the complaint. [Code 1881 § 1712; 1873 p 335 § 19; 1860 p 245 § 26; RRS § 1755.]

12.04.020 Action to recover debt—Summons—Service. A party desiring to commence an action before a justice of the peace, for the recovery of a debt by summons, shall file his claim with the justice of the peace, verified by his own oath, or that of his agent or attorney, and thereupon the justice of the peace shall, on payment of his fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz:

The State of Washington,
 _____ County } ss.

To the sheriff or any constable of said county:
 In the name of the state of Washington, you are hereby commanded to summon _____ if he (or they) be found in your county to be and appear before me at _____ on _____ day of _____ at _____ o'clock p.m. or a.m., to answer the complaint of _____ for a failure to pay him a certain demand, amounting to _____ dollars and _____ cents, upon _____ (here state briefly the nature of the claim) and of this writ make due service and return.

Given under my hand this _____ day of _____ 19__.
 _____, Justice of the Peace.

And the summons shall specify a certain place, day and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his place of abode with some person over twelve years of

age, a true copy of such summons, certified by the officer to be such. [Code 1881 § 1713; 1873 p 335 § 20; 1860 p 245 § 29; RRS § 1758.]

12.04.030 Action by complaint and notice. Any person desiring to commence an action before a justice of the peace, by the service of a complaint and notice, can do so by filing his complaint verified by his own oath or that of his agent or attorney with the justice, and when such complaint is so filed, upon payment of his fees if demanded, the justice shall attach thereto a notice, which shall be substantially as follows:

The State of Washington, }
----- County, } ss.

To -----

You are hereby notified to be and appear at my office in ----- on the ----- day of -----, 19---, at the hour of ----- M., to answer to the foregoing complaint or judgment will be taken against you as confessed and the prayer of the plaintiff granted.

Dated -----, 19---

-----, J. P.

[Code 1881 § 1714; 1873 p 336 § 21; 1860 p 245 § 29; RRS § 1759.]

12.04.040 Service of complaint and notice. The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of the complaint and notice. [1925 ex.s. c 181 § 1; Code 1881 § 1715; 1873 p 337 § 22; RRS § 1761.]

12.04.050 Process—Who may serve. All process issued by district court judges of the state and all executions and writs of attachment or of replevin shall be served by a sheriff or a deputy, but a summons or notice and complaint may be served by any citizen of the state of Washington over the age of eighteen years and not a party to the action. [1987 c 442 § 1102; 1971 ex.s. c 292 § 11; 1903 c 19 § 1; 1895 c 102 § 1; 1893 c 108 § 1; Code 1881 § 1716; 1873 p 337 § 23; RRS § 1762. Formerly RCW 12.04.050 and 12.04.060, part.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

12.04.060 Process—Service by constable or sheriff. All process in actions and proceedings in justice courts, having a salaried constable, when served by an officer, shall be served by such constable or by the sheriff of the county or his duly appointed deputy; and all fees for such service shall be paid into the county treasury. [1909 c 132 § 1; RRS § 1760. FORMER PARTS OF SECTION: 1903 c 19 § 1, part, now codified in RCW 12.04.050.]

12.04.070 Process—Return—Fees. Every constable or sheriff serving process or complaint and notice

shall return in writing, the time, manner and place of service and indorse thereon the legal fees therefor and shall sign his name to such return, and any person other than one of said officers serving summons or complaint and notice shall file with the justice his affidavit, stating the time, place and manner of the service of such summons or notice and complaint and shall indorse thereon the legal fees therefor. [1959 c 99 § 1; 1903 c 19 § 2; 1895 c 102 § 2; 1893 c 108 § 2; Code 1881 § 1717; 1873 p 337 § 24; 1860 p 246 § 37; 1854 p 229 § 31; RRS § 1763.]

12.04.080 Process—Service by person appointed by justice, return, exceptions. Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his fees for service thereon: *Provided*, It shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: *Provided further*, That it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person eighteen years of age or over and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice. [1971 ex.s. c 292 § 12; 1903 c 19 § 3; Code 1881 § 1718; 1873 p 337 § 25; RRS § 1764.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

12.04.090 Proof of service. Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff his return signed by him and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service. [Code 1881 § 1719; 1873 p 337 § 26; RRS § 1765.]

12.04.100 Service by publication. In case personal service cannot be had by reason of the absence of the defendant from the county in which the action is sought to be commenced, it shall be proper to publish the summons or notice with a brief statement of the object and prayer of the claim or complaint, in some newspaper of general circulation in the county wherein the action is commenced, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from the first publication of the notice.

The notice may be substantially as follows:

The State of Washington, }
County of ----- } ss.

In justice's court, ----- justice.

To -----

You are hereby notified that ----- has filed a complaint (or claim as the case may be) against you in said court which will come on to be heard at my office in -----, in ----- county, state of Washington, on the ----- day of -----, A.D. 19 --, at the hour of ----- o'clock ----- m., and unless you appear and then and there answer, the same will be taken as confessed and the demand of the plaintiff granted. The object and demand of said claim (or complaint, as the case may be) is (here insert a brief statement).

Complaint filed -----, A.D. 19 --
-----, J. P.

[1985 c 469 § 6; Code 1881 § 1720; 1873 p 337 § 27; RRS § 1766.]

Legal publications: Chapter 65.16 RCW.

12.04.110 Proof of service by publication. Proof of service, in case of publication, shall be the affidavit of the publisher, printer, foreman or principal clerk, showing the same. [Code 1881 § 1721; 1873 p 338 § 28; RRS § 1767.]

12.04.120 Written admission as proof of service. The written admission of the defendant, his agent or attorney, indorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case. [Code 1881 § 1722; 1873 p 338 § 29; RRS § 1768.]

12.04.130 Jurisdiction, when acquired. The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings. [Code 1881 § 1723; 1873 p 338 § 30; RRS § 1769.]

12.04.140 Action by person under eighteen years. No action shall be commenced by any person under the age of eighteen years, except by his guardian, or until a next friend for such a person shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein. [1971 ex.s. c 292 § 75; Code 1881 § 1753; 1873 p 343 § 52; 1854 p 230 § 40; RRS § 1771.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

12.04.150 Action against defendant under eighteen years—Guardian ad litem. After service and return of process against a defendant under the age of eighteen years, the action shall not be further prosecuted, until a guardian for such defendant shall have been appointed.

Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action. [1971 ex.s. c 292 § 76; Code 1881 § 1754; 1873 p 343 § 53; 1854 p 230 § 41; RRS § 1772.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

12.04.160 Time for appearance. The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons or notice for appearance, but shall not be required to remain longer than that time, unless both parties appear; and the justice being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial. [1957 c 89 § 1; Code 1881 § 1755; 1873 p 344 § 54; 1854 p 230 § 42; RRS § 1773.]

12.04.170 Security for nonresident costs. Whenever the plaintiff in an action, or in a garnishment or other proceeding is a nonresident of the county or begins such action or proceeding as the assignee of some other person, or of a firm or corporation, as to all causes of action sued upon, the justice may require of him security for the costs in the action or proceeding in a sum not exceeding fifty dollars, at the time of the commencement of the action, and after an action or proceeding has been commenced by such nonresident or assignee plaintiff, the defendant or garnishee defendant may require such security by motion; and all proceedings shall be stayed until such security has been given. [1929 c 102 § 1; 1905 c 10 § 1; Code 1881 § 1725; 1854 p 228 § 27; RRS § 1777.]

12.04.180 Cost bond in lieu of security. In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of fifty dollars running to the state of Washington, with surety approved by the court, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action. [1929 c 102 § 2; RRS § 1777 1/2.]

12.04.190 Penalty for failure to execute process or false return. If any officer, without showing good cause therefor, fail to execute any process to him delivered,

and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action. [Code 1881 § 1752; 1873 p 343 § 51; 1854 p 230 § 39; RRS § 1776.]

12.04.200 Forms, or equivalents prescribed. The forms or equivalent forms as set forth in RCW 12.04-.201 through 12.04.208 may be used by justices of the peace, in civil actions and proceedings under this chapter. [1957 c 89 § 3. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.201 Form of subpoena.

FORM OF SUBPOENA

State of Washington, }
County of _____ } ss.

To _____:
In the name of the state of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the _____ day of _____, 19___, at _____ o'clock in the _____ noon, at his office in _____, to give evidence in a certain cause, then and there to be tried, between A B, plaintiff, and C D, defendant, on the part of (the plaintiff, or defendant as the case may be).

Given under my hand this _____ day of _____, 19___

J. P., Justice of the Peace.

[1957 c 89 § 4. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.203 Form of execution—Form of execution against principal and surety, after expiration of stay of execution.

FORM OF EXECUTION

State of Washington, }
County of _____ } ss.

To the sheriff or any constable of said county:
Whereas, judgment against C D, for the sum of _____ dollars, and _____ dollars cost of suit, was recovered on the _____ day of _____, 19___, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B, for his debt, interests and costs.

Given under my hand this _____ day of _____, 19___

J. P., Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION

State of Washington, }
County of _____ } ss.

To the sheriff or any constable of said county:
Whereas, judgment against C D for the sum of _____ dollars, and for _____ dollars, costs of suit, was recovered on the _____ day of _____, 19___, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the _____ day of _____, 19___, E F became surety to pay said judgment and costs, in _____ month from the date of the judgment aforesaid, agreeably to law, in the payment of which said C D and E F have failed; these are, therefore, in the name, etc., [as in the common form].

[1957 c 89 § 5. Prior: Code 1881 § 1895, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.204 Form of order in replevin.

FORM OF ORDER IN REPLEVIN

State of Washington, }
County of _____ } ss.

To the sheriff or any constable of said county:
In the name of the state of Washington, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery, the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this _____ day of _____, 19___

J. P., Justice of the Peace.

[1957 c 89 § 6. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.205 Form of a writ of attachment.

FORM OF A WRIT OF ATTACHMENT

State of Washington, }
County of _____ } ss.

To the sheriff or any constable of said county:
In the name of the state of Washington, you are commanded to attach, and safely keep, the goods and chattels, moneys, effects and credits of C D, (excepting such as the law exempts), or so much thereof as shall satisfy the sum of _____ dollars, with interest and cost of suit, in whosoever hands or possession the same may be found in your county, and to provide that the goods

and chattels so attached may be subject to further proceeding thereon, as the law requires; and of this writ make legal service and due return.

Given under my hand this ----- day of -----, 19--.

J. P., Justice of the Peace.

[1957 c 89 § 7. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.206 Form of undertaking in replevin.

FORM OF UNDERTAKING IN REPLEVIN

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for ----- county, against C D, defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit: [here set forth the property claimed]. Now, therefore we, A B, plaintiff, E F and G H, acknowledge ourselves bound unto C D in the sum of ----- dollars for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the ----- day of -----, 19-- A B, E F, G H.

[1957 c 89 § 8. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

12.04.207 Form of undertaking in attachment— Form of undertaking to discharge attachment.

FORM OF UNDERTAKING IN ATTACHMENT

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for ----- county, for a writ of attachment against the personal property of C D, defendant; Now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D in the sum of ----- dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment and not exceeding the sum of ----- dollars.

Dated the ----- day of -----, 19-- A B, E F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for ----- county, against the personal property of C D, defendant, in an action in which A B is plaintiff; Now, therefore, we C D, defendant, E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of ----- dollars, [double the value of the property], engaging to deliver the property attached, to wit: [here set forth a list of articles attached], or pay the value

thereof to the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this ----- day of -----, 19-- C D, E F, G H.

[1957 c 89 § 9. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 § 19, part; RRS § 1890, part.]

12.04.208 Form of undertaking to indemnify constable on claim of property by a third person.

FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON

Whereas, L M, claims to be owner of, and have the right to possession of certain personal property, to wit: [here describe it] which has been taken by J K, constable in ----- county, upon an execution by J P, justice of the peace in and for the county of -----, upon a judgment obtained by A B, plaintiff, against C D, defendant; Now, therefore, we A B, plaintiff, E F, and G H, acknowledge ourselves bound unto the said J K, constable, in the sum of ----- dollars, to indemnify the said J K against such claim. A B, E F, G H.

[1957 c 89 § 10. Prior: Code 1881 § 1885, part; 1873 p 373 c 16, part; 1863 p 370 c 16, part; 1854 p 253 c 19, part; RRS § 1890, part.]

Chapter 12.08 PLEADINGS

Sections

12.08.010	When pleadings take place.
12.08.020	What constitute pleadings.
12.08.030	Pleadings oral or written.
12.08.040	Docketing or filing.
12.08.050	Denial of knowledge or information—Effect.
12.08.060	Pleading account or instrument.
12.08.070	Verification.
12.08.080	Uncontroverted allegations—Effect.
12.08.090	Objections to pleadings—Amendment.
12.08.100	Variance between pleading and proof.
12.08.110	Amendments—Continuance.
12.08.120	Setoff, how pleaded.

12.08.010 When pleadings take place. The pleadings in justice's court shall take place upon the appearance of the parties, unless they shall have been previously filed or unless the justice shall, for good cause shown, allow a longer time than the time of appearance. [Code 1881 § 1756; 1873 p 344 § 55; 1854 p 231 § 43; RRS § 1778.]

12.08.020 What constitute pleadings. The pleadings in the justice's court shall be:

(1) The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action.

(2) The answer of the defendant, which may contain a denial of the complaint, or any part thereof; and also a

statement, in a plain and direct manner, of any facts constituting a defense.

(3) When the answer sets up a setoff, by way of defense, the reply of the plaintiff. [Code 1881 § 1757; 1873 p 344 § 56; 1854 p 231 § 44; RRS § 1779.]

12.08.030 Pleadings oral or written. The pleadings in justices' courts may be oral or in writing. [1957 c 89 § 11; Code 1881 § 1758; 1873 p 344 § 57; 1854 p 231 § 45; RRS § 1780.]

12.08.040 Docketing or filing. When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing they shall be filed in his office and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended. [Code 1881 § 1759; 1873 p 345 § 58; 1854 p 231 § 46; RRS § 1781.]

12.08.050 Denial of knowledge or information—Effect. A statement in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party to form a belief, shall be deemed equivalent to a denial. [Code 1881 § 1760; 1873 p 345 § 59; 1854 p 231 § 47; RRS § 1782.]

12.08.060 Pleading account or instrument. When the cause of action, or setoff, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or setoff. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being given in evidence. [Code 1881 § 1761; 1873 p 345 § 60; 1854 p 231 § 48; RRS § 1783.]

12.08.070 Verification. Every complaint, answer or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral, or in writing, in conformity with the pleading verified. [Code 1881 § 1762; 1873 p 345 § 61; 1854 p 232 § 49; RRS § 1784.]

12.08.080 Uncontroverted allegations—Effect. Every material allegation in a complaint, or relating to a setoff in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case. [Code 1881 § 1763; 1873 p 345 § 62; 1854 p 232 § 50; RRS § 1785.]

12.08.090 Objections to pleadings—Amendment. Either party may object to a pleading by his adversary,

or to any part thereof that is not sufficiently explicit for him to understand it, or that it contains no cause of action or defense although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded. [Code 1881 § 1764; 1873 p 345 § 63; 1854 p 232 § 51; RRS § 1786.]

12.08.100 Variance between pleading and proof. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby. [Code 1881 § 1765; 1873 p 346 § 64; 1854 p 232 § 52; RRS § 1787.]

12.08.110 Amendments—Continuance. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials, necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party. [Code 1881 § 1766; 1873 p 346 § 65; 1854 p 232 § 53; RRS § 1788.]

12.08.120 Setoff, how pleaded. To entitle a defendant to any setoff he may have against the plaintiff, he must allege the same in his answer; and the statutes regulating setoffs in the superior court, shall in all respects be applicable to a setoff in a justice's court, if the amount claimed to be setoff, after deducting the amount found due to the plaintiff, be within the jurisdiction of the justice of the peace; judgment may, in like manner, be rendered by the justice in favor of the defendant, for the balance found due the plaintiff. [Code 1881 § 1767; 1873 p 346 § 66; 1854 p 232 § 54; RRS § 1789.]

Reviser's note: Justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

Chapter 12.12 TRIAL

Sections

12.12.010	Continuances limited.
12.12.020	Trial by justice.
12.12.030	Jury—Number—Qualifications—Fee.
12.12.040	Time of jury trial.
12.12.060	Summons for jurors.
12.12.070	Oath administered.
12.12.080	Delivery of verdict.
12.12.090	Discharge of jury.
12.12.100	Penalty for juror failing to appear.

12.12.010 Continuances limited. When the pleadings of the party shall have taken place, the justice shall, upon the application of either party, and sufficient cause be shown on oath, continue the case for any time not

exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuance in the superior court. [1957 c 89 § 12; Code 1881 § 1769; 1873 p 346 § 68; 1854 p 232 § 56; RRS § 1847.]

12.12.020 Trial by justice. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly. [Code 1881 § 1782; 1873 p 350 § 81; 1854 p 237 § 82; RRS § 1848.]

12.12.030 Jury—Number—Qualifications—Fee. After the appearance of the defendant, and before the justice shall proceed to enquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful persons having the qualifications of jurors in the superior court of the same county, unless the parties shall agree upon a lesser number: *Provided*, That the party demanding the jury shall first pay to the justice the sum of twenty-five dollars, which shall be paid over by the justice to the county, and said amount shall be taxed as costs against the losing party. [1981 c 260 § 3. Prior: 1977 ex.s. c 248 § 2; 1977 ex.s. c 53 § 2; 1888 p 118 § 1; Code 1881 § 1770; 1863 p 438 § 51; 1862 p 58 § 1; 1854 p 235 § 70; RRS § 1849.]

12.12.040 Time of jury trial. When a jury is demanded, the trial of the case must be adjourned until the time fixed for the return of the jury; if neither party desire an adjournment the time must be determined by the justice, and must be on the same day, or within the next two days. The jury must be immediately selected as herein provided. [1888 p 118 § 2; Code 1881 § 1771; 1854 p 235 § 71; RRS § 1850.]

12.12.060 Summons for jurors. The justice shall thereupon issue or cause to be issued a summons for the jury, which summons shall be served personally or by certified mail upon the persons named. [1975 1st ex.s. c 119 § 1; 1888 p 119 § 4; Code 1881 § 1773; 1854 p 236 § 73; RRS § 1852.]

12.12.070 Oath administered. When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause. [Code 1881 § 1776; 1873 p 348 § 75; 1854 p 236 § 76; RRS § 1853.]

12.12.080 Delivery of verdict. When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket. [Code 1881 § 1777; 1873 p 348 § 76; 1854 p 236 § 77; RRS § 1854.]

12.12.090 Discharge of jury. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot

agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce. [Code 1881 § 1778; 1873 p 348 § 77; 1854 p 236 § 78; RRS § 1855.]

12.12.100 Penalty for juror failing to appear. Every person who shall be duly summoned as a juror, and shall not appear nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars. [Code 1881 § 1779; 1873 p 348 § 78; 1854 p 236 § 79; RRS § 1856.]

Chapter 12.16

WITNESSES AND DEPOSITIONS

Sections

12.16.015	District court may compel attendance of witness.
12.16.020	Service of subpoena.
12.16.030	Attachment for nonappearance.
12.16.040	Service of attachment—Fees.
12.16.050	Damages for nonappearance.
12.16.060	Party to action as adverse witness.
12.16.070	Testimony of party may be rebutted.
12.16.080	Procedure on party's refusal to testify.
12.16.090	Examination of party in his own behalf.

Oaths and affirmations: Chapter 5.28 RCW.

12.16.015 District court may compel attendance of witness. Any person may be compelled to attend as a witness before a district court in accordance with chapter 5.56 RCW. [1984 c 258 § 702.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.16.020 Service of subpoena. A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy at his usual place of abode. [Code 1881 § 1870; 1873 p 370 § 169; 1854 p 233 § 58; RRS § 1899.]

12.16.030 Attachment for nonappearance. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have the power to issue an attachment to compel the attendance of such witness: *Provided*, That no attachment shall issue against a witness in any civil action, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena. [Code 1881 § 1871; 1873 p 370 § 170; 1854 p 233 § 59; RRS § 1900.]

Attachment of a witness: RCW 5.56.070.

When witness must attend: RCW 5.56.010.

12.16.040 Service of attachment—Fees. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs. [Code 1881 § 1872; 1873 p 370 § 171; 1854 p 233 § 60; RRS § 1901.]

Attachment, to whom directed—Execution: RCW 5.56.080.

12.16.050 Damages for nonappearance. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his nonappearance: *Provided*, That such witness had the fees allowed for mileage and one day's attendance paid, or tendered him, in advance, if demanded by him at the time of the service. [Code 1881 § 1873; 1873 p 371 § 172; 1854 p 234 § 61; RRS § 1902.]

Result of failure to attend: RCW 5.56.060, 5.56.061.

When witness must attend: RCW 5.56.010.

12.16.060 Party to action as adverse witness. A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken. [Code 1881 § 1874; 1873 p 371 § 173; 1854 p 234 § 62; RRS § 1903.]

12.16.070 Testimony of party may be rebutted. The examination of a party thus taken, may be rebutted by adverse testimony. [Code 1881 § 1875; 1873 p 371 § 174; 1854 p 234 § 63; RRS § 1904.]

12.16.080 Procedure on party's refusal to testify. If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint, answer or reply, may be stricken out, and judgment taken against him. [Code 1881 § 1876; 1873 p 371 § 175; 1854 p 234 § 64; RRS § 1905.]

Penalty for failure to testify: Rules of court: CR 43(f)(3).

12.16.090 Examination of party in his own behalf. A party examined by an adverse party may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received. [Code 1881 § 1877; 1873 p 371 § 176; 1854 p 234 § 65; RRS § 1906.]

[Title 12 RCW—p 8]

Chapter 12.20

JUDGMENTS

Sections

12.20.010	Judgment of dismissal.
12.20.020	Judgment by default.
12.20.030	Judgment on merits.
12.20.040	Tender—Effect of, on judgment.
12.20.050	Setoff—Limitation of judgment.
12.20.060	Judgment for costs—Attorney's fee.
12.20.070	Proceedings where title to land is involved.

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

12.20.010 Judgment of dismissal. Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:

(1) When the plaintiff voluntarily dismisses the action before it is finally submitted.

(2) When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.

(3) When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county [precinct]; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial it shall be deemed waived, and shall not be cause of reversal. [Code 1881 § 1780; 1873 p 348 § 79; 1863 p 349 § 61; 1854 p 236 § 80; RRS § 1857.]

12.20.020 Judgment by default. When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

(1) When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

(2) In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

(3) The justice shall have full power at any time after a judgment has been given by default for failure of the defendant to appear and plead at the proper time, to vacate and set aside said judgment for any good cause and upon such terms as he shall deem sufficient and proper. Such judgment shall only be set aside upon five days notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the justice within ten days after the entry of the judgment. The justice shall hear the application to set aside such judgment either upon affidavits or oral testimony as he may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to a trial upon the merits: *Provided*, That, no justice of the peace shall pay out or turn over money or property received by him by virtue of any default judgment until the expiration of the ten days for moving to set aside such default judgment has expired. [1915 c 41 § 1; Code 1881 § 1781; 1873 p

349 § 79; 1863 p 349 § 62; 1854 p 237 § 81; RRS § 1858.]

12.20.030 Judgment on merits. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered within three days after the close of the trial. [1957 c 89 § 13; Code 1881 § 1783; 1873 p 350 § 82; 1854 p 237 § 83; RRS § 1859.]

12.20.040 Tender—Effect of, on judgment. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he do not accept such offer before the trial, and fail to recover on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it, shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided. [Code 1881 § 1784; 1873 p 350 § 83; 1863 p 350 § 65; 1854 p 237 § 84; RRS § 1860.]

12.20.050 Setoff—Limitation of judgment. When the setoff of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case, the court shall not render judgment for any further sum in favor of the defendant. [Code 1881 § 1768; 1873 p 346 § 67; 1854 p 232 § 55; RRS § 1861.]

12.20.060 Judgment for costs—Attorney's fee. When the prevailing party in district court is entitled to recover costs as authorized in RCW 4.84.010 in a civil action, the judge shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the judge shall enter up a judgment in favor of the defendant for the amount of his costs; and in case any party so entitled to costs is represented in the action by an attorney, the judge shall include attorney's fees of fifty dollars as part of the costs: *Provided, however,* That the plaintiff shall not be entitled to such attorney fee unless he obtains, exclusive of costs, a judgment in the sum of twenty-five dollars or more. [1985 c 240 § 2; 1984 c 258 § 89; 1975-'76 2nd ex.s. c 30 § 1; 1915 c 43 § 1; 1893 c 12 § 1; Code 1881 § 1785; 1873 p 350 § 84; 1854 p 237 § 85; RRS § 1862.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010. *Attorneys' fee as costs in damage actions of ten thousand dollars or less: RCW 4.84.250 through 4.84.300.*

12.20.070 Proceedings where title to land is involved. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed

by the other, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the superior court of the county, a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the superior court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the cost shall abide the event of the suit. [Code 1881 § 1868; 1873 p 369 § 167; 1854 p 235 § 69; RRS § 1863.]

**Chapter 12.28
REPLEVIN**

Sections
12.28.005 Chapter 7.64 RCW available to plaintiff in action to recover possession of personal property.

12.28.005 Chapter 7.64 RCW available to plaintiff in action to recover possession of personal property. The plaintiff in an action to recover the possession of personal property may claim and obtain the immediate delivery of the property, after a hearing, as provided in chapter 7.64 RCW. [1979 ex.s. c 132 § 8.]

Severability—1979 ex.s. c 132: See RCW 7.64.900.

**Chapter 12.36
APPEALS**

Sections
12.36.010 Appeal authorized.
12.36.020 Appeal, how taken—Bond.
12.36.030 Stay of proceedings.
12.36.040 Release of property taken on execution.
12.36.050 Transcript, procedure in superior court—Pleadings in superior court.
12.36.070 Transcript—Procedure on failure to make and certify—Amendment.
12.36.080 No dismissal for defective bond.
12.36.090 Judgment against appellant and sureties.

Reviser's note: References in this chapter to justices of the peace and courts to be construed to mean district judges and courts: See RCW 3.30.015.

Costs in appeal from district courts: RCW 4.84.130.

12.36.010 Appeal authorized. Any person considering himself aggrieved by the judgment or decision of a justice of the peace in a civil action may, in person or by his agent or attorney, appeal therefrom to the superior court of the county where the judgment was rendered or decision made: *Provided,* There shall be no appeal allowed unless the amount in controversy, exclusive of costs, shall exceed the sum of twenty dollars: *Provided further,* That an appeal from the court's determination or order on a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). [1979 ex.s. c 136 § 21; 1929 c 58 § 1; RRS § 1910. Prior: 1905 c 20

§ 1; 1891 c 29 § 1; Code 1881 § 1858; 1873 p 367 § 156; 1854 p 252 § 160.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

12.36.020 Appeal, how taken—Bond. Such appeal shall be taken by serving a copy of notice of appeal on the adverse party or his attorney, and filing such notice of appeal with the justice, and, unless such appeal be by a county, city, town or school district, filing a bond or undertaking, as herein provided, within twenty days after the judgment is rendered or decision made. No appeal, except when such appeal is by a county, city, town or school district, shall be allowed in any case unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the justice, with one or more sureties, in the sum of one hundred dollars, conditioned that the appellant will pay all costs that may be awarded against him on appeal; or if a stay of proceedings before the justice be claimed, except by a county, city, town or school district, a bond or undertaking, with two or more personal sureties, or a surety company as surety, to be approved by the justice, in a sum equal to twice the amount of the judgment and costs, conditioned that the appellant will pay such judgment, including costs, as may be rendered against him on appeal, be so executed and filed. [1929 c 58 § 2; RRS § 1911. Prior: 1891 c 29 § 1; Code 1881 § 1859; 1873 p 367 §§ 157, 158; 1854 p 252 §§ 161, 162.]

12.36.030 Stay of proceedings. Upon an appeal being taken and a bond filed to stay all proceedings, the justice shall allow the same and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if in the meantime execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed. [1929 c 58 § 3; RRS § 1912. Prior: Code 1881 § 1861; 1873 p 368 § 160; 1854 p 252 § 164.]

12.36.040 Release of property taken on execution. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the judgment debtor that may have been taken on execution. [1929 c 58 § 4; RRS § 1913. Prior: Code 1881 § 1862; 1873 p 368 § 161; 1854 p 252 § 165.]

12.36.050 Transcript, procedure in superior court—Pleadings in superior court. Within ten days after the appeal has been taken in a civil action or proceeding, the appellant shall file with the clerk of the superior court a transcript of all entries made in the justice's docket relating to the case, together with all the process and other papers relating to the case filed with the justice which shall be made and certified by such justice to be correct upon the payment of the fees allowed by law therefor, and upon the filing of such transcript, the superior court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that

court, except as in this chapter otherwise provided. The issue before the justice shall be tried in the superior court without other or new pleadings, unless otherwise directed by the court. [1929 c 58 § 5; RRS §§ 1914, 1915. Prior: 1891 c 29 § 4; Code 1881 § 1863; 1873 p 368 § 162; 1854 p 252 § 166. Formerly RCW 12.36.050 and 12.36.060.]

12.36.070 Transcript—Procedure on failure to make and certify—Amendment. If upon an appeal being taken the justice shall fail, neglect or refuse, upon the tender or payment of the fees allowed by law, to make and certify the transcript, the appellant may make application, supported by affidavit, to the superior court and the court shall issue an order directing the justice to make and certify such transcript upon the payment of such fees, and whenever it shall appear to the satisfaction of the superior court that the return of the justice to such order is substantially erroneous or defective it may order him to amend the same. If the justice shall fail, neglect or refuse to comply with any order issued under the provisions of this section he may be cited and punished as for contempt of court. [1929 c 58 § 6; RRS § 1916. Prior: 1891 c 29 § 5; Code 1881 § 1865; 1854 p 253 § 168.]

12.36.080 No dismissal for defective bond. No appeal allowed by a justice of the peace shall be dismissed on account of any defect in the bond on appeal, if the appellant, before the motion is determined, shall execute and file in the superior court such bond as he should have executed at the time of taking the appeal, and pay all costs that may have accrued by reason of such defect. [1929 c 58 § 7; RRS § 1917. Prior: Code 1881 § 1867; 1873 p 369 § 165; 1854 p 253 § 169.]

12.36.090 Judgment against appellant and sureties. In all cases of appeal to the superior court, if on the trial anew in such court, the judgment be against the appellant, in whole or in part, such judgment shall be rendered against him and his sureties on the bond on appeal. [1929 c 58 § 8; RRS § 1918. Prior: Code 1881 § 1867; 1873 p 369 § 166; 1854 p 253 § 170.]

Chapter 12.40 SMALL CLAIMS

Sections

12.40.010	Department authorized—Jurisdictional amount.
12.40.020	Action, how commenced—Fee.
12.40.025	Transfer of action to small claims department.
12.40.030	Setting case for hearing.
12.40.040	Service of notice of claim—Fee.
12.40.045	Recovery of fees as court costs.
12.40.050	Requisites of claim.
12.40.060	Requisites of notice.
12.40.070	Verification of claim.
12.40.080	Hearing.
12.40.090	Informal pleadings.
12.40.100	Payment of monetary judgment.
12.40.105	Increase of judgment upon failure to pay.
12.40.110	Procedure on nonpayment.
12.40.120	Appeals.

12.40.010 Department authorized—Jurisdictional amount. In every district court there shall be created and organized by the court a department to be known as the "small claims department of the district court". The small claims department shall have jurisdiction, but not exclusive, in cases for the recovery of money only if the amount claimed does not exceed one thousand dollars. [1984 c 258 § 57; 1981 c 331 § 10; 1979 c 102 § 4; 1973 c 128 § 1; 1970 ex.s. c 83 § 1; 1963 c 123 § 1; 1919 c 187 § 1; RRS § 1777-1.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

Application, savings—Effective date—Severability—1979 c 102: See notes following RCW 3.66.020.

12.40.020 Action, how commenced—Fee. A small claims action shall be commenced by the plaintiff filing a claim, in the form prescribed by RCW 12.40.050, in the small claims department. A filing fee of ten dollars shall be paid when the claim is filed. [1984 c 258 § 58; 1919 c 187 § 2; RRS § 1777-2.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.025 Transfer of action to small claims department. A defendant in a district court proceeding in which the claim is within the jurisdictional amount for the small claims department may in accordance with court rules transfer the action to the small claims department. In the event of such a transfer the provisions of RCW 12.40.070 shall not be applicable if the plaintiff was an assignee of the claim at the time the action was commenced nor shall the provisions of RCW 12.40.080 prohibit an attorney from representing the plaintiff if he was the attorney of record for the plaintiff at the time the action was commenced. [1984 c 258 § 59; 1970 ex.s. c 83 § 2.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.030 Setting case for hearing. Upon filing of a claim, the court shall set a time for hearing of the matter and cause to be issued a notice of the claim which shall be served upon the defendant. [1984 c 258 § 60; 1981 c 330 § 3; 1980 c 162 § 11; 1963 c 123 § 2; 1919 c 187 § 3; RRS § 1777-3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Severability—1981 c 330: See note following RCW 3.62.060.

Severability—1980 c 162: See note following RCW 3.02.010.

12.40.040 Service of notice of claim—Fee. The notice of claim can be served either as provided for the service of summons or complaint and notice in civil actions or by registered or certified mail if a return receipt with the signature of the party being served is filed with the court. No other paper is to be served with the notice. The officer serving the notice shall be entitled to receive

from the plaintiff, besides mileage, the fee specified in RCW 36.18.040 for such service; which sum, together with the filing fee named in *RCW 12.40.030, shall be added to any judgment given for plaintiff. [1984 c 258 § 61; 1981 c 194 § 3; 1970 ex.s. c 83 § 3; 1959 c 263 § 9; 1919 c 187 § 4; RRS § 1777-4.]

***Reviser's note:** RCW 12.40.030 no longer refers to a filing fee; see instead RCW 12.40.020.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Severability—1981 c 194: See note following RCW 36.18.040.

12.40.045 Recovery of fees as court costs. In the event persons other than the sheriff or duly appointed deputies charge a fee for services in excess of the fees allowed under RCW 36.18.040, the prevailing party incurring such charges shall be entitled to recover as court costs only the amount of the fees for such services as provided in RCW 36.18.040. [1981 c 194 § 4.]

Severability—1981 c 194: See note following RCW 36.18.040.

12.40.050 Requisites of claim. A claim filed in the small claims department shall contain: (1) The name and address of the plaintiff; (2) a statement, in brief and concise form, of the nature and amount of the claim and when the claim accrued; and (3) the name and residence of the defendant, if known to the plaintiff, for the purpose of serving the notice of claim on the defendant. [1984 c 258 § 62; 1919 c 187 § 5; RRS § 1777-5.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.060 Requisites of notice. The notice of claim directed to the defendant shall contain: (1) The name and address of the plaintiff; (2) a brief and concise statement of the nature and amount of the claim; (3) a statement directing and requiring defendant to appear personally in the small claims department at a time certain, which shall not be less than five days from the date of service of the notice; and (4) a statement advising the defendant that in case of his or her failure to appear, judgment will be given against defendant for the amount of the claim. [1984 c 258 § 63; 1981 c 331 § 11; 1919 c 187 § 6; RRS § 1777-6.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

12.40.070 Verification of claim. A claim must be verified by the real claimant, and no claim shall be filed or prosecuted in the small claims department by the assignee of the claim. [1984 c 258 § 64; 1919 c 187 § 7; RRS § 1777-7.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.080 Hearing. No attorney at law, legal paraprofessional, nor any person other than the plaintiff and defendant, shall concern himself or herself or in any

manner interfere with the prosecution or defense of litigation in the small claims department without the consent of the judge of the district court. If a corporation plaintiff is represented by an attorney at law, or legal paraprofessional, the judge shall at the request of the defendant transfer the case to the regular civil docket. In the small claims department it shall not be necessary to summon witnesses, but the plaintiff and defendant in any claim shall have the privilege of offering evidence in their behalf by witnesses appearing at such hearing, and the judge may informally consult witnesses or otherwise investigate the controversy between the parties, and give judgment or make such orders as the judge may deem to be right, just and equitable for the disposition of the controversy. [1984 c 258 § 65; 1981 c 331 § 12; 1919 c 187 § 8; RRS § 1777-8.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

12.40.090 Informal pleadings. A formal pleading, other than the claim and notice, shall not be necessary to define the issue between the parties. The hearing and disposition of the actions shall be informal, with the sole object of dispensing speedy and quick justice between the litigants. An attachment, garnishment or execution shall not issue from the small claims department on any claim except as provided in this chapter. [1984 c 258 § 66; 1919 c 187 § 9; RRS § 1777-9.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

12.40.100 Payment of monetary judgment. If a monetary judgment or order is entered, it shall be the judgment debtor's duty to pay the judgment upon such terms and conditions as the judge shall prescribe. If the judgment is not paid to the prevailing party at the time the judgment is entered and the judgment debtor is present in court, the court may order a payment plan. [1984 c 258 § 67; 1983 c 254 § 1; 1919 c 187 § 10; RRS § 1777-10.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—1983 c 254: "This act shall take effect on January 1, 1984." [1983 c 254 § 5.]

12.40.105 Increase of judgment upon failure to pay. If the losing party fails to pay the judgment within twenty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; and (2) the amount specified in RCW 36.18.020(3), without regard to the jurisdictional limits on the small claims department. [1983 c 254 § 2.]

Effective date—1983 c 254: See note following RCW 12.40.100.

12.40.110 Procedure on nonpayment. (1) If the losing party fails to pay the judgment according to the terms and conditions thereof within twenty days or is in

arrears on any payment plan, and the prevailing party so notifies the court, the judge before whom such hearing was had shall certify the judgment in substantially the following form:

Washington.

In the District Court of ----- County.

----- Plaintiff,

vs.

----- Defendant.

In the Small Claims Department.

This is to certify that: (1) In a certain action before me, the undersigned, had on this the ---- day of ----- 19--, wherein ----- was plaintiff and ----- defendant, jurisdiction of said defendant having been had by personal service (or otherwise) as provided by law, I then and there entered judgment against ----- in the sum of ----- Dollars; (2) the judgment has not been paid within twenty days or the period otherwise ordered by the court; and (3) pursuant to RCW 12.40..., the amount of the judgment is hereby increased by any costs of certification under this section and the amount specified in RCW 36.18.020(3).

Witness my hand this ---- day of -----, 19--.

District Judge sitting in the
Small Claims Department.

(2) The judge shall forthwith enter the judgment transcript on the judgment docket of the district court; and thereafter garnishment, execution, and other process on execution provided by law may issue thereon, as in other judgments of district courts.

(3) Transcripts of such judgments may be filed and entered in judgment lien dockets in superior courts with like effect as in other cases. [1984 c 258 § 68; 1983 c 254 § 3; 1975 1st ex.s. c 40 § 1; 1973 c 128 § 2; 1919 c 187 § 11; RRS § 1777-11.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Effective date—1983 c 254: See note following RCW 12.40.100.

12.40.120 Appeals. No appeal shall be permitted from a judgment of the small claims department of the district court where the amount claimed was less than one hundred dollars nor shall any appeal be permitted by a party who requested the exercise of jurisdiction by the small claims department. [1984 c 258 § 69; 1970 ex.s. c 83 § 4.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Title 13

JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

- 13.04 Basic juvenile court act.**
- 13.06 Juvenile offenders—Consolidated juvenile services programs.**
- 13.16 Places of detention.**
- 13.20 Management of detention facilities—Class AA counties.**
- 13.24 Interstate compact on juveniles.**
- 13.32A Procedures for families in conflict.**
- 13.34 Juvenile court act in cases relating to dependency of a child and the termination of a parent and child relationship.**
- 13.40 Juvenile justice act of 1977.**
- 13.50 Keeping and release of records by juvenile justice or care agencies.**
- 13.60 Missing children clearinghouse.**

Action against parent for wilful injury to property by minor: RCW 4.24.190.

Alcoholic beverage control: Title 66 RCW.

Child

abuse: Chapter 26.44 RCW.

custody, action by relative: RCW 26.09.255.

domestic violence prevention: Chapter 26.50 RCW.

labor: Chapters 26.28, 28A.27, 49.12 RCW.

welfare agencies: Chapter 74.15 RCW.

Children and family services: Chapter 74.14A RCW.

Compulsory school attendance: Chapter 28A.27 RCW.

Council on child abuse and neglect: Chapter 43.121 RCW.

Firearms: RCW 9.41.080, 9.41.240.

Infants: Chapter 26.28 RCW.

Jurisdiction over Indians as to juvenile delinquency and dependent children: Chapter 37.12 RCW.

Leaving children in parked automobile: RCW 9.91.060.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Public institutions, division of children and youth services: Chapter 72.05 RCW.

Report of child abuse: Chapter 26.44 RCW.

State institutions: Title 72 RCW.

Tobacco: RCW 26.28.080.

Vacation and modification of judgments—Causes for enumerated: RCW 4.72.010(5).

Witnesses—Who are disqualified—Privileged communications: RCW 5.60.060.

Youth development and conservation corps: Chapter 43.51 RCW.

- 13.04.035 Administrator of juvenile court, probation counselor and detention services—Appointment.
- 13.04.037 Administrator—Adoption of standards for detention facilities for juveniles by—Revision and inspection.
- 13.04.040 Administrator—Appointment of probation counselors and persons in charge of detention facilities—Powers and duties, compensation—Collection of fines.
- 13.04.047 Administrator or staff—Health and dental examination and care—Consent.
- 13.04.050 Expenses of probation officers.
- 13.04.093 Hearings—Duties of prosecuting attorney or attorney general, when.
- 13.04.116 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement.
- 13.04.135 Establishment of house or room of detention.
- 13.04.145 Educational program for juveniles in detention facilities.
- 13.04.160 Fees not allowed.
- 13.04.180 Board of visitation.
- 13.04.240 Court order not deemed conviction of crime.
- 13.04.300 Juvenile may be both dependent and an offender.
- 13.04.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders—Chapter 10.22 RCW does not apply to proceedings under chapter 13.40 RCW.
- 13.04.460 Implementation and enforcement of juvenile justice laws—Reports.

Aid to families with dependent children: Chapter 74.12 RCW.

Division of children and youth services, construed in connection with and supplemental to the juvenile court law: RCW 72.05.170 through 72.05.210.

Educational aid for handicapped children: Chapter 28A.13 RCW.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Missing children clearinghouse and hotline: Chapter 13.60 RCW.

Record of traffic charges of juveniles to be furnished juvenile court: RCW 46.20.293.

Relinquishment of permanent care of child: RCW 26.33.090.

Schools designated close security institutions: RCW 72.05.130.

Transfer from minimum security to close security institution—Court order required: RCW 72.05.130(3).

13.04.005 Short title. This chapter shall be known as the "basic juvenile court act". [1977 ex.s. c 291 § 1.]

Effective dates—1977 ex.s. c 291: "Section 57 of this 1977 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of state government and its existing public institutions, and shall take effect on July 1, 1977. The remainder of this 1977 amendatory act shall take effect on July 1, 1978." [1977 ex.s. c 291 § 83.] Section 57 of 1977 ex.s. c 291 is codified as RCW 13.40.030.

Severability—1977 ex.s. c 291: "If any provision of this 1977 amendatory 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." [1977 ex.s. c 291 § 82.]

The above two annotations apply to 1977 ex.s. c 291. For codification of that act, see Codification Tables, Volume 0.

13.04.011 Definitions. For purposes of this title:

(1) Except as specifically provided in RCW 13.40.020 and chapter 13.24 RCW, as now or hereafter amended, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

Chapter 13.04

BASIC JUVENILE COURT ACT

(Formerly: Juvenile courts)

Sections

- 13.04.005 Short title.
- 13.04.011 Definitions.
- 13.04.021 Juvenile court—How constituted—Cases tried without jury.
- 13.04.030 Juvenile court—Exclusive original jurisdiction.
- 13.04.033 Appeal of court order—Procedure—Priority, when.

(2) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.010 through 13.40.240;

(3) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(4) "Parent" or "parents," except as used in chapter 13.34 RCW, as now or hereafter amended, 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;

(5) "Custodian" means that person who has the legal right to custody of the child. [1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

Effective date—1979 c 155: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1979]." [1979 c 155 § 89.]

Severability—1979 c 155: "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." [1979 c 155 § 88.]

The above two annotations apply to 1979 c 155. For codification of that act, see Codification Tables, Volume 0.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.021 Juvenile court—How constituted—Cases tried without jury. (1) The juvenile court shall be a division of the superior court. In judicial districts having more than one judge of the superior court, the judges of such court shall annually assign one or more of their number to the juvenile court division. In any judicial district having a court commissioner, the court commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear all cases under this chapter and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050.

(2) Cases in the juvenile court shall be tried without a jury. [1979 c 155 § 2; 1977 ex.s. c 291 § 3.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.030 Juvenile court—Exclusive original jurisdiction. The juvenile courts in the several counties of this state, shall have exclusive original jurisdiction over all proceedings:

(1) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(2) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170, as now or hereafter amended;

(3) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210, as now or hereafter amended;

(4) To approve or disapprove alternative residential placement as provided in RCW 13.32A.170;

(5) Relating to juveniles alleged or found to have committed offenses, traffic infractions, or violations as provided in RCW 13.40.020 through 13.40.230, as now or hereafter amended, unless:

(a) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110, as now or hereafter amended; or

(b) The statute of limitations applicable to adult prosecution for the offense, traffic infraction, or violation has expired; or

(c) The alleged offense or infraction is a traffic, fish, boating, or game offense or traffic infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction: *Provided*, That if such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters: *Provided further*, That the jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1) or subsection (5)(a) of this section: *Provided further*, That courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04-.035 and 13.20.060;

(6) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(7) Relating to termination of a diversion agreement under RCW 13.40.080 as now or hereafter amended, including a proceeding in which the divertee has attained eighteen years of age; and

(8) Relating to court validation of a voluntary consent to foster care placement under chapter 13.34 RCW or relinquishment or consent to adoption under chapter 26-.33 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction. [1987 c 170 § 1; 1985 c 354 § 29; 1984 c 272 § 1; 1981 c 299 § 1; 1980 c 128 § 6; 1979 c 155 § 3; 1977 ex.s. c 291 § 4; 1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

Severability—1987 c 170: "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." [1987 c 170 § 15.]

Severability—**Effective date**—1985 c 354: See RCW 71.34.900 and 71.34.901.

Effective date—**Severability**—1980 c 128: See notes following RCW 46.63.060.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

Court commissioners: Chapter 2.24 RCW, state Constitution Art. 4 § 23.

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 65).

13.04.033 Appeal of court order—Procedure—
Priority, when. Any person aggrieved by a final order of the court may appeal the order as provided by this section. All appeals in matters other than those related to commission of a juvenile offense shall be taken in the same manner as in other civil cases. Except as otherwise provided in this title, all appeals in matters related to the commission of a juvenile offense shall be taken in the same manner as criminal cases and the right to collateral relief shall be the same as in criminal cases. The order of the juvenile court shall stand pending the disposition of the appeal: *Provided*, That the court or the appellate court may upon application stay the order.

If the final order from which an appeal is taken grants the custody of the child to, or withholds it from, any of the parties, or if the child is committed as provided under this chapter, the appeal shall be given priority in hearing. [1979 c 155 § 4; 1977 ex.s. c 291 § 5.]

Rules of court: Rules of Appellate Procedure.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.035 Administrator of juvenile court, probation counselor and detention services—Appointment. Juvenile court, probation counselor, and detention services shall be administered by the superior court, except that by local court rule and agreement with the legislative authority of the county they may be administered by the legislative authority of the county in the manner prescribed by RCW 13.20.060: *Provided*, That in any class AA county such services shall be administered in accordance with chapter 13.20 RCW. The administrative body shall appoint an administrator of juvenile court, probation counselor, and detention services who shall be responsible for day-to-day administration of such services, and who may also serve in the capacity of a probation counselor. One person may, pursuant to the agreement of more than one administrative body, serve as administrator of more than one juvenile court. [1979 c 155 § 5; 1977 ex.s. c 291 § 6.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Prosecuting attorney as party to juvenile court proceedings—Exception, procedure: RCW 13.40.090.

13.04.037 Administrator—Adoption of standards for detention facilities for juveniles by—Revision and inspection. The administrator shall after consultation with the state planning agency established under Title II of the federal juvenile justice and delinquency prevention act of 1974 (P.L. No. 93-415; 42 U.S.C. 5611 et seq.) following a public hearing, and after approval of the

body responsible for administering the juvenile court, and no later than one hundred eighty days after the effective date of this 1977 amendatory act, adopt standards for the regulation and government of detention facilities for juveniles. Such standards may be revised from time to time, according to the procedure outlined in this section. Each detention facility shall keep a copy of such standards available for inspection at all times. Such standards shall be reviewed and the detention facilities shall be inspected annually by the administrator. [1977 ex.s. c 291 § 7.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.040 Administrator—Appointment of probation counselors and persons in charge of detention facilities—Powers and duties, compensation—Collection of fines. The administrator shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the administrator. The probation counselor shall:

(1) Receive and examine referrals to the juvenile court for the purpose of considering the filing of a petition or information pursuant to RCW 13.34.040, 13.34.180, and 13.40.070 as now or hereafter amended, and RCW 13.32A.150;

(2) Make recommendations to the court regarding the need for continued detention or shelter care of a child unless otherwise provided in this title;

(3) Arrange and supervise diversion agreements as provided in RCW 13.40.080, as now or hereafter amended, and ensure that the requirements of such agreements are met except as otherwise provided in this title;

(4) Prepare predisposition studies as required in RCW 13.34.120 and 13.40.130, as now or hereafter amended, and be present at the disposition hearing to respond to questions regarding the predisposition study: *Provided*, That such duties shall be performed by the department of social and health services for cases relating to dependency or to the termination of a parent and child relationship which is filed by the department of social and health services unless otherwise ordered by the court; and

(5) Supervise court orders of disposition to ensure that all requirements of the order are met.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests of juveniles under their supervision for the violation of any state law or county or city ordinance.

The administrator may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or houses of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the legislative authority of the county, or in cases of joint counties, judicial districts of more than one county, or joint judicial

districts such sums as shall be agreed upon by the legislative authorities of the counties affected, and such persons shall be paid as other county officers are paid.

The administrator is hereby authorized, and to the extent possible is encouraged to, contract with private agencies existing within the community for the provision of services to youthful offenders and youth who have entered into diversion agreements pursuant to RCW 13.40.080, as now or hereafter amended.

The administrator shall establish procedures for the collection of fines assessed under RCW 13.40.080 (2)(d) and (13) and for the payment of the fines into the county general fund. [1983 c 191 § 14; 1979 c 155 § 6; 1977 ex.s. c 291 § 8; 1959 c 331 § 9; 1951 c 270 § 1; 1921 c 43 § 1; 1913 c 160 § 3; RRS § 1987-3.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.047 Administrator or staff—Health and dental examination and care—Consent. (1) The administrator of the juvenile court or authorized staff may consent as provided in this section to the provision of health and dental examinations and care, and necessary treatment for medical and dental conditions requiring prompt attention, for juveniles lawfully detained at or sentenced to a detention facility. The treatment may include treatment provided at medical or dental facilities outside the juvenile detention facility and treatment provided within the juvenile detention facility for the period of time the youth is in the custody of the facility. Juveniles shall not be transported for treatment outside the facility if treatment services are available within the facility.

(2) The examination, care, and treatment may be provided without parental consent when prompt attention is required if the administrator of the juvenile court or authorized staff have been unable to secure permission for treatment from the parent or parents, guardian, or other person having custody of the child after reasonable attempts to do so before the provision of the medical and dental services.

(3) Treatment shall not be authorized for juveniles whose parent or parents, guardian, or other person having custody of the child informs the administrator of the juvenile court of objections to the treatment before the treatment is provided except where RCW 69.54.060 applies. [1983 c 267 § 2.]

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

13.04.050 Expenses of probation officers. The probation officers, and assistant probation officers, and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court, and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the expenses shall be paid out of the county treasury upon a written

order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses. [1913 c 160 § 4; RRS § 1987-4.]

13.04.093 Hearings—Duties of prosecuting attorney or attorney general, when. It shall be the duty of the prosecuting attorney to act in proceedings relating to the commission of a juvenile offense as provided in RCW 13.40.070 and 13.40.090 and in proceedings as provided in chapter 71.34 RCW. It shall be the duty of the prosecuting attorney to handle delinquency cases under chapter 13.24 RCW and it shall be the duty of the attorney general to handle dependency cases under chapter 13.24 RCW. It shall be the duty of the attorney general in contested cases brought by the department to present the evidence supporting any petition alleging dependency or seeking the termination of a parent and child relationship or any contested case filed under RCW 26.33-.100 or approving or disapproving alternative residential placement: *Provided*, That in class 1 through 9 counties the attorney general may contract with the prosecuting attorney of the county to perform said duties of the attorney general. [1985 c 354 § 30; 1985 c 7 § 4; 1979 ex.s. c 165 § 6; 1977 ex.s. c 291 § 9.]

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.04.116 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement. (1) A juvenile shall not be confined in a jail or holding facility for adults, except:

(a) For a period not exceeding twenty-four hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; or

(b) For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates.

(2) For purposes of this section a juvenile is an individual under the chronological age of eighteen years who has not been transferred previously to adult courts.

(3) The department of social and health services shall monitor and enforce compliance with this section.

(4) This section shall not be construed to expand or limit the authority to lawfully detain juveniles. [1987 c 462 § 1; 1985 c 50 § 1.]

Effective dates—1987 c 462: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions. Sections 15 and 21 of this act shall take effect immediately. Sections 1 through 11 and sections 16, 17, 22 and 23 of this act shall take effect January 1, 1988." [1987 c 462 § 24.] For codification of 1987 c 462, see Codification Tables, Volume 0.

Places of detention: Chapter 13.16 RCW.

Transfer of juvenile to department of corrections: RCW 13.40.280.

13.04.135 Establishment of house or room of detention. Counties containing more than fifty thousand inhabitants shall, and counties containing a lesser number of inhabitants may, provide and maintain at public expense, a detention room or house of detention, separated or removed from any jail, or police station, to be in charge of a matron, or other person of good character, wherein all children within the provisions of this chapter shall, when necessary, be sheltered. [1983 c 98 § 2; 1945 c 121 § 1; 1913 c 160 § 13; Rem. Supp. 1945 1987-13. Formerly RCW 13.16.010.]

Detention in facility under jurisdiction of juvenile court—Financial responsibility for cost of detention: RCW 13.34.170, 13.16.085.

13.04.145 Educational program for juveniles in detention facilities. A program of education shall be provided for by the several counties and school districts of the state for common school age persons confined in each of the detention facilities staffed and maintained by the several counties of the state under this chapter and chapters 13.16 and 13.20 RCW. The division of duties, authority, and liabilities of the several counties and school districts of the state respecting the educational programs is the same in all respects as set forth in RCW 28A.58.772 through 28A.58.778 respecting programs of education for state residential school residents. For the purposes of this section, the terms "department of social and health services," "residential school" or "schools," and "superintendent or chief administrator of a residential school" as used in RCW 28A.58.772 through 28A.58.778 shall be respectively construed to mean "the several counties of the state," "detention facilities," and "the administrator of juvenile court detention services." Nothing in this section shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.21.086. [1983 c 98 § 1.]

Juvenile facilities, educational programs: RCW 28A.58.765.

13.04.160 Fees not allowed. No fees shall be charged or collected by any officer or other person for filing petition, serving summons, or other process under this chapter. [1913 c 160 § 16; RRS § 1987-16.]

13.04.180 Board of visitation. In each county, the judge presiding over the juvenile court sessions, as defined in this chapter, may appoint a board of four reputable citizens, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as twice a year all institutions, societies and associations within the county receiving children under this chapter, as well as all homes for children or other places where individuals are holding themselves out as caretakers of children, also to visit other institutions, societies and associations within the state receiving and caring for children, whenever requested to do so by the judge of the juvenile court: *Provided*, The actual expenses of such board may be paid by the county commissioners when members thereof are requested to visit institutions outside of the county seat, and no member of the board shall be required to visit any institutions outside the county unless his actual traveling expenses shall

be paid as aforesaid. Such visits shall be made by not less than two members of the board, who shall go together or make a joint report. The board of visitors shall report to the court from time to time the condition of children received by or in charge of such institutions, societies, associations, or individuals. It shall be the duty of every institution, society, or association, or individual receiving and caring for children to permit any member or members of the board of visitation to visit and inspect such institution, society, association or home where such child is kept, in all its departments, so that a full report may be made to the court. [1913 c 160 § 18; RRS § 1987-18.]

13.04.240 Court order not deemed conviction of crime. An order of court adjudging a child delinquent or dependent under the provisions of this chapter shall in no case be deemed a conviction of crime. [1961 c 302 § 16. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part.]

13.04.300 Juvenile may be both dependent and an offender. Nothing in chapter 13.04, 13.06, 13.32A, 13.34, or 13.40 RCW may be construed to prevent a juvenile from being found both dependent and an offender if there exists a factual basis for such a finding. [1983 c 3 § 15; 1979 c 155 § 14.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.04.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders—Chapter 10.22 RCW does not apply to proceedings under chapter 13.40 RCW. The provisions of chapters 13.04 and 13.40 RCW, as now or hereafter amended, shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided. Chapter 10.22 RCW does not apply to juvenile offender proceedings, including diversion, under chapter 13.40 RCW. [1985 c 257 § 5; 1981 c 299 § 20.]

Severability—1985 c 257: See note following RCW 13.34.165.

13.04.460 Implementation and enforcement of juvenile justice laws—Reports. The legislature finds that there is evidence of failure to implement and enforce juvenile justice laws. This failure may be due to a number of factors, including, but not necessarily limited to, resource limitations within the various units of government charged with responsibility for such implementation and enforcement.

Therefore, commencing with April 4, 1986, and continuing through such time as further legislative direction is enacted into law, any person legally responsible for implementation or enforcement of any provision of chapter 13.04, 13.32A, 13.34, or 74.13 RCW who is unable to implement or enforce any such provision shall file a report on the situation as soon as possible with the oversight committee created under *section 3 of this act or, if the oversight committee has ceased to exist, to the judiciary committees of the house of representatives and the senate. Any such report shall include a documented

description of the situation and the reason or reasons for failure to implement or enforce the provision in question.

Nothing contained in this section is intended to limit criminal or civil liability or to protect any employee against possible disciplinary action for failure to perform his or her duties. [1986 c 288 § 4.]

***Select legislative committee—1986 c 288 § 3:** "There shall be created a joint select legislative committee to review the implementation and administration of:

- (1) Chapter 13.04 RCW, the basic juvenile court act;
- (2) Chapter 13.32A RCW, procedures for families in conflict generally, and specifically review the alternative residential placement process and the advisability of granting the juvenile court jurisdiction to make in-house placements. The committee shall consider the establishment of a residential school to address the needs of children who, pursuant to law, may be ordered into an alternative residential placement. A residential school may be funded and operated, in whole or in part by private contributions;
- (3) Chapter 13.34 RCW, the juvenile court act relating to dependency of a child and the termination of a parent and child relationship; and
- (4) Chapter 74.13 RCW, child welfare services.

The joint select legislative committee shall be composed of bipartisan members of the house and senate judiciary committee to be selected at the discretion of the committee chairpersons.

The committee established under this section shall meet and conduct hearings as often as is necessary to carry out its responsibilities under this chapter.

In reviewing the implementation and administration of chapters 13.04, 13.32A, 13.34, and 74.13 RCW the joint select legislative committee may inquire into instances where it is alleged that a law enforcement officer, school employee, department employee, judge, or juvenile court employee has either misrepresented a provision of the cited chapters or has failed to follow any such provision.

The joint select legislative committee shall be granted access to all relevant information necessary to monitor behavior of agencies and/or employees: *Provided*, That any confidential information shall be kept confidential by members of the committee and shall not be further disseminated unless specifically authorized by state or federal law.

The joint select legislative committee shall report its findings and make recommendations regarding implementation of the chapters cited in this section in a report submitted to the legislature before the 1988 regular session of the legislature.

The joint select legislative committee, unless recreated by the legislature, shall cease to exist after submitting the report required under this section." [1986 c 288 § 3.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Chapter 13.06

JUVENILE OFFENDERS—CONSOLIDATED JUVENILE SERVICES PROGRAMS

(Formerly: Probation services—Special supervision programs)

Sections

13.06.010	Intention.
13.06.020	State to share in cost.
13.06.030	Rules—Standards—"Consolidated juvenile services" defined.
13.06.040	Application by county or counties for state financial aid.
13.06.050	Conditions for receiving state funds—Criteria for distribution of funds.
13.06.055	Housing authorities law—Group homes or halfway houses for released juveniles or developmentally disabled.

Juvenile may be both dependent and an offender: RCW 13.04.300.

13.06.010 Intention. It is the intention of the legislature in enacting this chapter to increase the protection

afforded the citizens of this state, to require community planning, to provide necessary services and supervision for juvenile offenders in the community when appropriate, to reduce reliance on state-operated correctional institutions for offenders whose standard range disposition does not include commitment of the offender to the department, and to encourage the community to efficiently and effectively provide community services to juvenile offenders through consolidation of service delivery systems. [1983 c 191 § 1; 1969 ex.s. c 165 § 1.]

Effective date—1969 ex.s. c 165: "This act shall become effective on July 1, 1969." [1969 ex.s. c 165 § 7.] This act [1969 ex.s. c 165] consists of the enactment of chapter 13.06 RCW.

13.06.020 State to share in cost. From any state moneys made available for such purpose, the state of Washington, through the department of social and health services, shall, in accordance with this chapter and applicable departmental rules, share in the cost of providing services to juveniles. [1983 c 191 § 2; 1979 c 141 § 13; 1969 ex.s. c 165 § 2.]

13.06.030 Rules—Standards—"Consolidated juvenile services" defined. The department of social and health services shall adopt rules prescribing minimum standards for the operation of consolidated juvenile services programs for juvenile offenders and such other rules as may be necessary for the administration of the provisions of this chapter. Consolidated juvenile services is a mechanism through which the department of social and health services supports local county comprehensive program plans in providing services to offender groups. Standards shall be sufficiently flexible to support current programs which have demonstrated effectiveness and efficiency, to foster development of innovative and improved services for juvenile offenders, to permit direct contracting with private vendors, and to encourage community support for and assistance to local programs. The secretary of social and health services shall seek advice from appropriate juvenile justice system participants in developing standards and procedures for the operation of consolidated juvenile services programs and the distribution of funds under this chapter. [1983 c 191 § 3; 1979 c 141 § 14; 1969 ex.s. c 165 § 3.]

13.06.040 Application by county or counties for state financial aid. Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department for financial aid for the cost of consolidated juvenile services programs. Any such application must include a plan or plans for providing consolidated services to juvenile offenders in accordance with standards of the department. [1983 c 191 § 4; 1979 c 141 § 15; 1969 ex.s. c 165 § 4.]

13.06.050 Conditions for receiving state funds—Criteria for distribution of funds. No county shall be entitled to receive any state funds provided by this chapter until its application and plan are approved, and unless

and until the minimum standards prescribed by the department of social and health services are complied with and then only on such terms as are set forth in this section.

(1) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, juvenile crime or arrest rates, existing programs, and the effectiveness and efficiency of consolidating local programs towards reducing commitments to state correctional facilities for offenders whose standard range disposition does not include commitment of the offender to the department and reducing reliance on other traditional departmental services.

(2) The secretary will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs. [1983 c 191 § 5; 1979 c 151 § 9; 1977 ex.s. c 307 § 1; 1973 1st ex.s. c 198 § 1; 1971 ex.s. c 165 § 1; 1969 ex.s. c 165 § 5.]

Effective date—1977 ex.s. c 307: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 307 § 3.]

Effective date—1973 1st ex.s. c 198: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973." [1973 1st ex.s. c 198 § 3.]

13.06.055 Housing authorities law—Group homes or halfway houses for released juveniles or developmentally disabled. See RCW 35.82.285.

Chapter 13.16

PLACES OF DETENTION

Sections

13.16.010	Establishment of house or room of detention.
13.16.020	Lack of detention facilities constitutes emergency.
13.16.030	Mandatory function of counties.
13.16.040	Counties authorized to acquire facilities and employ adequate staffs.
13.16.050	Federal or state aid.
13.16.060	Statutory debt limits may be exceeded.
13.16.070	Bonds may be issued without vote of electors.
13.16.080	Allocation of budgeted funds.
13.16.085	Financial responsibility for cost of detention.
13.16.090	Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement.

Child

welfare agencies: Chapter 74.15 RCW.

welfare services: Chapter 74.13 RCW.

County juvenile detention facilities—Policy: RCW 13.40.038.

Employment of dental hygienist without supervision of a dentist authorized: RCW 18.29.056.

13.16.010 Establishment of house or room of detention. See RCW 13.04.135.

13.16.020 Lack of detention facilities constitutes emergency. The attention of the legislature having been called to the absence of juvenile detention facilities in the various counties of the state, the legislature hereby declares that this situation constitutes an emergency demanding the invocation by the several counties affected of the emergency powers granted by virtue of RCW 36.40.140 through 36.40.200. [1945 c 188 § 1; Rem. Supp. 1945 § 2004–1.]

13.16.030 Mandatory function of counties. The construction, acquisition and maintenance of juvenile detention facilities for dependent, wayward and delinquent children, separate and apart from the detention facilities for adults, is hereby declared to be a mandatory function of the several counties of the state. [1945 c 188 § 2; Rem. Supp. 1945 § 2004–2.]

13.16.040 Counties authorized to acquire facilities and employ adequate staffs. Boards of county commissioners in the various counties now suffering from a lack of adequate detention facilities for dependent, delinquent and wayward children shall, in the manner provided by law, declare an emergency and appropriate, in the manner provided by law, sufficient funds to meet all demands for adequate care of dependent, delinquent and wayward children. All appropriations made under the provisions of RCW 13.16.020 through 13.16.080 are to be used exclusively for the acquisition, purchase, construction or leasing of real and personal property and the employment and payment of salaries for an adequate staff of juvenile officers and necessary clerical staff and assistants and for furnishing suitable food, clothing and recreational facilities for dependent, delinquent and wayward children. [1945 c 188 § 3; Rem. Supp. 1945 § 2004–3.]

13.16.050 Federal or state aid. In connection with the financing of facilities and the employment of a staff of juvenile officers for dependent, delinquent and wayward children, the various boards of county commissioners affected shall attempt to secure such advances, loans, grants in aid, donations as gifts as may be secured from the federal government or any of its agencies or from the state government or from other public or private institutions or individuals. [1945 c 188 § 4; Rem. Supp. 1945 § 2004–4.]

13.16.060 Statutory debt limits may be exceeded. Appropriations made under authority and by virtue of RCW 13.16.020 through 13.16.080 and debts incurred by any county in carrying out the provisions of RCW 13.16.020 through 13.16.080 may exceed all statutory limitations otherwise applicable and limiting the debt any county may incur. [1945 c 188 § 5; Rem. Supp. 1945 § 2004–5.]

13.16.070 Bonds may be issued without vote of electors. In order to carry out the provisions of RCW 13.16.020 through 13.16.080 the several counties affected shall utilize any and all methods available to them by

law for financing the program authorized by RCW 13.16.020 through 13.16.080 and may fund any and all debts incurred by the issuance of general obligation bonds of the county in the manner provided by law, without submitting the same to a vote of the people. [1945 c 188 § 6; Rem. Supp. 1945 § 2004-6.]

13.16.080 Allocation of budgeted funds. In order to carry out the provisions of RCW 13.16.020 through 13.16.080 the board of county commissioners is hereby authorized, any law to the contrary notwithstanding, to allocate any funds that may be available in any item or class of the budget as presently constituted to the fund to be used to carry out the provisions of RCW 13.16.020 through 13.16.080. [1945 c 188 § 7; Rem. Supp. 1945 § 2004-7.]

13.16.085 Financial responsibility for cost of detention. In any case in which a child under eighteen years of age has been placed in any detention facility under the jurisdiction of the juvenile court, the court may inquire into the facts concerning the necessity or propriety of such child's detention notwithstanding the fact that such child may not have been found to be either a dependent or a delinquent child.

The court may, either in the proceedings involving the question of dependency or delinquency of such child or in a separate proceeding, upon the parent or parents, guardian, or other person having custody of said child being duly summoned or voluntarily appearing, proceed to inquire into the necessity or propriety of such detention and into the ability of such person or persons to pay the cost of such detention.

If the court finds that such detention was necessary or proper for the welfare of the child or for the protection of the community, and if the court also finds the parent or parents, guardian, or other person having the custody of such child able to pay or contribute to the payment of the cost of such detention, the court may enter such order or decree as shall be equitable in the premises, and may enforce the same by execution or in any way a court of equity may enforce its decrees. [1955 c 369 § 1.]

Basic juvenile court act: Chapter 13.04 RCW.

13.16.090 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement. See RCW 13.04.116.

Chapter 13.20

MANAGEMENT OF DETENTION FACILITIES— CLASS AA COUNTIES

Sections

13.20.010	Board of managers—Appointment authorized—Composition.
13.20.020	Terms of office—Removal—Vacancies.
13.20.030	Chairman—Quorum—Organization—Rules of procedure.
13.20.040	Powers and duties of board.
13.20.050	Compensation of members.

13.20.060 Transfer of administration of juvenile court services to county executive—Authorized—Advisory board—Procedure.

Employment of dental hygienist without supervision of a dentist authorized: RCW 18.29.056.

Places of detention: Chapter 13.16 RCW.

Places of detention—Basic juvenile court act: Chapter 13.04 RCW.

13.20.010 Board of managers—Appointment authorized—Composition. The judges of the superior court of any class AA county are hereby authorized, by majority vote, to appoint a board of managers to administer, subject to the approval and authority of such superior court, the probation and detention services for dependent and delinquent children coming under the jurisdiction of the juvenile court.

Such board shall consist of four citizens of the county and the judge who has been selected to preside over the juvenile court. [1955 c 232 § 1.]

13.20.020 Terms of office—Removal—Vacancies. The nonjudicial members of the board first appointed shall be appointed for the respective terms of one, two, three, and four years and until their successors are appointed and qualified; and thereafter their successors shall be appointed for terms of four years and until their successors are appointed and qualified.

Any such member of the board may be removed at any time by majority vote of the judges of the superior court.

Vacancies on the board may be filled at any time by majority vote of said judges, and such appointee shall hold office for the remainder of the term of the member in whose stead he was appointed. [1955 c 232 § 2.]

13.20.030 Chairman—Quorum—Organization—Rules of procedure. The judicial member of the board shall be the chairman thereof; a majority thereof shall constitute a quorum for the transaction of business; and the board shall have authority to organize itself in such manner and to establish such rules of procedure as it deems proper for the performance of its duties. [1955 c 232 § 3.]

13.20.040 Powers and duties of board. The juvenile court board of managers shall:

(1) Have general supervision and care of all physical structures and grounds connected with the rendition of probation and detention services and power to do everything necessary to the proper maintenance thereof within the limits of the appropriations authorized.

(2) Subject to the approval and authority of said superior court, the board of managers shall have authority and power to determine the type and extent of probation and detention services to be conducted in connection with the juvenile court, and authority over all matters concerning employment, job classifications, salary scales, qualifications, and number of personnel necessarily involved in the rendition of probation and detention services.

(3) Prepare, in accordance with the provisions of the county budget law, and file with the county auditor a

detailed and itemized estimate, both of probable revenues from sources other than taxation and of all expenditures required for the rendition of the services under the jurisdiction of said board.

(4) Prepare and file with the superior court on July 1st of each year, and at such other times and in such form as the court shall require, a report of its operations. [1955 c 232 § 4.]

13.20.050 Compensation of members. No member of the board shall receive any compensation or emolument whatever for services as such board member. [1955 c 232 § 5.]

13.20.060 Transfer of administration of juvenile court services to county executive—Authorized—Advisory board—Procedure. In addition, and alternatively, to the authority granted by RCW 13.20.010, the judges of the superior court of any class AA county are hereby authorized, by a majority vote, subject to approval by ordinance of the legislative authority of the county to transfer to the county executive the responsibility for, and administration of all or part of juvenile court services, including detention, intake and probation. The superior court and county executive of such county are further authorized to establish a five-member juvenile court advisory board to advise the county in its administration of such services, facilities and programs. If the advisory board is established, two members of the advisory board shall be appointed by the superior court, two members shall be appointed by the county executive, and one member shall be selected by the vote of the other four members. The county is authorized to contract or otherwise make arrangements with other public or private agencies to provide all or a part of such services, facilities and programs. Subsequent to any transfer to the county of responsibility and administration of such services, facilities and programs pursuant to the foregoing authority, the judges of such superior court, by majority vote subject to the approval by ordinance of the legislative authority of the county, may retransfer the same to the superior court. [1975 1st ex.s. c 124 § 1.]

Chapter 13.24

INTERSTATE COMPACT ON JUVENILES

Sections	
13.24.010	Execution of compact.
13.24.020	Juvenile compact administrator.
13.24.030	Supplementary agreements.
13.24.035	Governor authorized and directed to execute supplementary compact—Contents.
13.24.040	Financial arrangements.
13.24.050	Fees.
13.24.060	Responsibilities of state departments, agencies and officers.
13.24.900	Short title.

13.24.010 Execution of compact. The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

ARTICLE I—Findings and Purposes

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(1) Cooperative supervision of delinquent juveniles on probation or parole;

(2) The return, from one state to another, of delinquent juveniles who have escaped or absconded;

(3) The return, from one state to another, of nondelinquent juveniles who have run away from home; and

(4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II—Existing Rights and Remedies

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III—Definitions

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV—Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for

the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located, a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order,

he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V—Return of Escapees and Absconders

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be

executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their

authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI—Voluntary Return Procedure

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV (a) or of article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII—Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it

deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII—Responsibility for Costs

(a) That the provisions of articles IV (b), V (b) and VII (d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or

subdivision thereof may be responsible pursuant to articles IV (b), V (b) or VII (d) of this compact.

ARTICLE IX—Detention Practices

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X—Supplementary agreements

That the duly constituted administrative authorities, of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(2) Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

(3) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) Provide for reasonable inspection of such institutions by the sending state;

(6) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI—Acceptance of Federal and Other Aid

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII—Compact Administrators

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and

regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII—Execution of Compact

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV—Renunciation

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

ARTICLE XV—Severability

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1955 c 284 § 1.]

13.24.020 Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder. [1955 c 284 § 2.]

13.24.030 Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate

officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1955 c 284 § 3.]

13.24.035 Governor authorized and directed to execute supplementary compact—Contents. (1) The governor is hereby authorized and directed to execute a compact amending and supplementing the interstate compact on juveniles on behalf of this state with any other state or states legally joining therein in the form substantially as set forth in subsection (2) of this section.

(2) (a) All provisions and procedures of Articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

(b) This amendment provides additional remedies and shall be binding only as among and between those party states which substantially execute the same. [1979 c 155 § 36.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.24.040 Financial arrangements. The compact administrator, subject to the approval of the office of financial management, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1979 ex.s. c 86 § 1; 1955 c 284 § 4.]

Severability—1979 ex.s. c 86: "If any provision of this 1979 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." [1979 ex.s. c 86 § 9.] For codification of 1979 ex.s. c 86, see Codification Tables, Volume 0.

13.24.050 Fees. Any judge of this state who appoints counsel or guardian ad litem pursuant to the provision of the compact may, in his discretion, fix a fee to be paid out of funds available for disposition by the court but no such fee shall exceed twenty-five dollars. [1955 c 284 § 5.]

13.24.060 Responsibilities of state departments, agencies and officers. The courts, departments, agencies

and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. [1955 c 284 § 6.]

13.24.900 Short title. This chapter may be cited as the "uniform interstate compact on juveniles." [1955 c 284 § 7.]

Chapter 13.32A

PROCEDURES FOR FAMILIES IN CONFLICT

Sections

- 13.32A.010 Legislative findings and declaration.
- 13.32A.020 Short title.
- 13.32A.030 Definitions—Regulating leave from semi-secure facility.
- 13.32A.040 Family reconciliation services—Request for—Scope.
- 13.32A.050 Officer taking child into custody—When authorized—Maximum time of custody—Notice to department, when.
- 13.32A.060 Officer taking child into custody—Procedure—Transporting to home or crisis residential center.
- 13.32A.065 Officer taking child into custody—Placing in detention—Detention review hearing—Hearing on contempt.
- 13.32A.070 Officer taking child into custody—Transporting to home other than of parent—Immunity from liability.
- 13.32A.080 Unlawful harboring of a minor—Penalties—Defense—Prosecution of adult for involving child in commission of offense.
- 13.32A.090 Duty to inform parents of child's whereabouts, condition and reconciliation procedure, when—Transportation to child's home or alternative residence, payment.
- 13.32A.100 Family reconciliation services for child in alternative residential placement.
- 13.32A.110 Interstate compact to apply, when.
- 13.32A.120 Alternative residential placement—Agreement to continue—Petition to approve.
- 13.32A.130 Child admitted to crisis residential center—Maximum hours of custody—Reconciliation effort—Information to parents upon retaining custody—Written statement of services and rights.
- 13.32A.140 Alternative residential placement—Department to file petition for, when—Procedure.
- 13.32A.150 Alternative residential placement—Petition by child or parent for—Procedure.
- 13.32A.160 Alternative residential placement—Court action upon filing of petition—Child placement.
- 13.32A.170 Alternative residential placement—Fact-finding hearing—Three-month placement disposition plan—Hearing, when—Approval or denial of petition—Contempt proceedings, when.
- 13.32A.175 Alternative residential placement—Contribution to child's support, when—Enforcement of order.
- 13.32A.180 Three-month placement disposition plan—Hearing—Court order—No placement in secure residence.
- 13.32A.190 Three-month placement dispositional order—Review of in subsequent hearings—Time limitation on out-of-home placement once hearings commence.
- 13.32A.200 Hearings under chapter—Time or place—General public excluded.
- 13.32A.250 Failure to comply with order as contempt—Procedure—Motion for—Penalties.
- 13.32A.260 Implementation and enforcement of juvenile justice laws—Reports.

Departmental duties relative to chapters 13.32A and 13.34 RCW—Plan and procedures for implementation of chapter 13.32A RCW—Report to local government entities: RCW 74.13.036.

*Juvenile may be both dependent and an offender: RCW 13.04.300.
Services for families—in-conflict: RCW 74.14A.020.*

13.32A.010 Legislative findings and declaration. The legislature finds that within any group of people there exists a need for guidelines for acceptable behavior and that, presumptively, experience and maturity are better qualifications for establishing guidelines beneficial to and protective of individual members and the group as a whole than are youth and inexperience. The legislature further finds that it is the right and responsibility of adults to establish laws for the benefit and protection of the society; and that, in the same manner, the right and responsibility for establishing reasonable guidelines for the family unit belongs to the adults within that unit. The legislature reaffirms its position stated in RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that it should remain intact in the absence of compelling evidence to the contrary. [1979 c 155 § 15.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.020 Short title. This chapter shall be known and may be cited as the Procedures for Families in Conflict. [1979 c 155 § 16.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.030 Definitions—Regulating leave from semi-secure facility. As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Department" means the department of social and health services;

(2) "Child," "juvenile," and "youth" mean any individual who is under the chronological age of eighteen years;

(3) "Parent" means the legal custodian(s) or guardian(s) of a child;

(4) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away: *Provided*, That such facility shall not be a secure institution or facility as defined by the federal juvenile justice and delinquency prevention act of 1974 (P.L. 93-415; 42 U.S.C. Sec. 5634 et seq.) and regulations and clarifying instructions promulgated thereunder. Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to

the center. The facility administrator shall notify a parent and the appropriate law enforcement agency within four hours of all unauthorized leaves. [1985 c 257 § 6; 1979 c 155 § 17.]

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.040 Family reconciliation services—**Request for**—**Scope.** Families who are in conflict may request family reconciliation services from the department. Such services shall be provided to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the child or family and to maintain families intact wherever possible. Family reconciliation services shall be designed to develop skills and supports within families to resolve family conflicts and may include but are not limited to referral to services for suicide prevention, psychiatric or other medical care, or psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the child and the family. [1981 c 298 § 1; 1979 c 155 § 18.]

Severability—1981 c 298: "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." [1981 c 298 § 20.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.050 Officer taking child into custody—**When authorized**—**Maximum time of custody**—**Notice to department, when.** A law enforcement officer shall take a child into custody:

(1) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or

(2) If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety; or

(3) If an agency legally charged with the supervision of a child has notified a law enforcement agency that the child has run away from placement; or

(4) If a law enforcement agency has been notified by the juvenile court that the court finds probable cause exists to believe that the child has violated a court placement order issued pursuant to chapter 13.32A RCW.

Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination.

An officer who takes a child into custody under this section and places the child in a designated crisis residential center shall inform the department of such placement within twenty-four hours.

(5) Nothing in this section affects the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law. [1986 c 288 § 1; 1985 c 257 § 7; 1981 c 298 § 2; 1979 c 155 § 19.]

Severability—1986 c 288: "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." [1986 c 288 § 13.]

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.060 Officer taking child into custody—**Procedure**—**Transporting to home or crisis residential center.** (1) An officer taking a child into custody under RCW 13.32A.050 (1) or (2) shall inform the child of the reason for such custody and shall either:

(a) Transport the child to his or her home. The officer releasing a child into the custody of the parent shall inform the parent of the reason for the taking of the child into custody and shall inform the child and the parent of the nature and location of appropriate services available in their community; or

(b) Take the child to a designated crisis residential center or the home of a responsible adult:

(i) If the child evinces fear or distress at the prospect of being returned to his or her home; or

(ii) If the officer believes there is a possibility that the child is experiencing in the home some type of child abuse or neglect, as defined in RCW 26.44.020, as now law or hereafter amended; or

(iii) If it is not practical to transport the child to his or her home; or

(iv) If there is no parent available to accept custody of the child.

The officer releasing a child into the custody of a responsible adult shall inform the child and the responsible adult of the nature and location of appropriate services available in the community.

(2) An officer taking a child into custody under RCW 13.32A.050 (3) or (4) shall inform the child of the reason for custody, and shall take the child to a designated crisis residential center licensed by the department and established pursuant to chapter 74.13 RCW. However, an officer taking a child into custody under RCW 13.32A.050(4) may place the child in a juvenile detention facility as provided in RCW 13.32A.065. The department shall ensure that all the enforcement authorities are informed on a regular basis as to the location of the designated crisis residential center or centers in their judicial district, where children taken into custody under RCW 13.32A.050 may be taken. [1985 c 257 § 8; 1981 c 298 § 3; 1979 c 155 § 20.]

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.065 Officer taking child into custody—**Placing in detention**—**Detention review hearing**—**Hearing on contempt.** (1) A child may be placed in detention after being taken into custody pursuant to RCW 13.32A.050(4). The court shall hold a detention review hearing within twenty-four hours, excluding Saturdays,

Sundays, and holidays. The court shall release the child after twenty-four hours, excluding Saturdays, Sundays, and holidays, unless:

(a) A motion and order to show why the child should not be held in contempt has been filed and served on the child at or before the detention hearing; and

(b) The court believes that the child would not appear at a hearing on contempt.

(2) If the court orders the child to remain in detention, the court shall set the matter for a hearing on contempt within seventy-two hours, excluding Saturdays, Sundays, and holidays. [1981 c 298 § 4.]

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.070 Officer taking child into custody—Transporting to home other than of parent—Immunity from liability. (1) An officer taking a child into custody under RCW 13.32A.050 may, at his or her discretion, transport the child to the home of a responsible adult who is other than the child's parent where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in the custody of such adult until such time as the department can bring about the child's return home or an alternative residential placement can be agreed to or determined pursuant to this chapter. An officer placing a child with a responsible adult other than his or her parent shall immediately notify the department's local community service office of this fact and of the reason for taking the child into custody.

(2) A law enforcement officer acting in good faith pursuant to this chapter in failing to take a child into custody, in taking a child into custody, or in releasing a child to a person other than a parent of such child is immune from civil or criminal liability for such action.

(3) A person other than a parent of such child who receives a child pursuant to this chapter and who acts reasonably and in good faith in doing so is immune from civil or criminal liability for the act of receiving such child. Such immunity does not release such person from liability under any other law including the laws regulating licensed child care and prohibiting child abuse. [1986 c 288 § 2; 1981 c 298 § 5; 1979 c 155 § 21.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.080 Unlawful harboring of a minor—Penalties—Defense—Prosecution of adult for involving child in commission of offense. (1) (a) A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission, and if the person intentionally:

(i) Fails to release the minor to a law enforcement officer after being requested to do so by the officer; or

(ii) Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the

officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location; or

(iii) Obstructs a law enforcement officer from taking the minor into custody; or

(iv) Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer.

(b) It is a defense to a prosecution under this section that the defendant had custody of the minor pursuant to a court order.

(2) Harboring a minor is punishable as a misdemeanor if the offender has not been previously convicted under this section and a gross misdemeanor if the offender has been previously convicted under this section.

(3) Any person who provides shelter to a child, absent from home, may notify the department's local community service office of the child's presence.

(4) An adult responsible for involving a child in the commission of an offense may be prosecuted under existing criminal statutes including, but not limited to:

(a) Distribution of a controlled substance to a minor, as defined in RCW 69.50.406;

(b) Promoting prostitution as defined in chapter 9A-.88 RCW; and

(c) Complicity of the adult in the crime of a minor, under RCW 9A.08.020. [1981 c 298 § 6; 1979 c 155 § 22.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.090 Duty to inform parents of child's whereabouts, condition and reconciliation procedure, when—Transportation to child's home or alternative residence, payment. (1) The person in charge of a designated crisis residential center or the department pursuant to RCW 13.32A.070 shall perform the duties under subsection (2) of this section:

(a) Upon admitting a child who has been brought to the center by a law enforcement officer under RCW 13.32A.060;

(b) Upon admitting a child who has run away from home or has requested admittance to the center;

(c) Upon learning from a person under RCW 13.32A.080(2) that the person is providing shelter to a child absent from home; or

(d) Upon learning that a child has been placed with a responsible adult pursuant to RCW 13.32A.070.

(2) When any of the circumstances under subsection (1) of this section are present, the person in charge of a center shall perform the following duties:

(a) Immediately notify the child's parent of the child's whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement;

(b) Initially notify the parent that it is the paramount concern of the family reconciliation service personnel to achieve a reconciliation between the parent and child to reunify the family and inform the parent as to the procedures to be followed under this chapter;

(c) Inform the parent whether a referral to children's protective services has been made and, if so, inform the

parent of the standard pursuant to RCW 26.44.020(12) governing child abuse and neglect in this state;

(d) Arrange transportation for the child to the residence of the parent, as soon as practicable, at the latter's expense to the extent of his or her ability to pay, with any unmet transportation expenses to be assumed by the department, when the child and his or her parent agrees to the child's return home;

(e) Arrange transportation for the child to an alternative residential placement which may include a licensed group care facility or foster family when agreed to by the child and parent at the latter's expense to the extent of his or her ability to pay, with any unmet transportation expenses assumed by the department. [1981 c 298 § 7; 1979 c 155 § 23.]

Reviser's note: Reference in subsection (1)(c) of RCW 13.32A.090 to "RCW 13.32A.080(2)" appears to be referring to such RCW subsection prior to its amendment by 1981 c 298 § 6.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.100 Family reconciliation services for child in alternative residential placement. Where a child is placed in a residence other than that of his or her parent pursuant to RCW 13.32A.090(2)(e), the department shall make available family reconciliation services in order to facilitate the reunification of the family. Any such placement may continue as long as there is agreement by the child and parent. [1981 c 298 § 8; 1979 c 155 § 24.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.110 Interstate compact to apply, when. If a child who has a legal residence outside the state of Washington is admitted to a crisis residential center or is placed by a law enforcement officer with a responsible person other than the child's parent, and the child refuses to return home, the provisions of RCW 13.24.010 shall apply. [1979 c 155 § 25.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Interstate compact on juveniles: Chapter 13.24 RCW.

13.32A.120 Alternative residential placement—Agreement to continue—Petition to approve. (1) Where either a child or the child's parent or the person or facility currently providing shelter to the child notifies the center that such individual or individuals cannot agree to the continuation of an alternative residential placement arrived at pursuant to RCW 13.32A.090(2)(e), the center shall immediately contact the remaining party or parties to the agreement and shall attempt to bring about the child's return home or to an alternative living arrangement agreeable to the child and the parent as soon as practicable.

(2) If a child and his or her parent cannot agree to an alternative residential placement under RCW 13.32A.090(2)(e), either the child or parent may file

with the juvenile court a petition to approve an alternative residential placement.

(3) If a child and his or her parent cannot agree to the continuation of an alternative residential placement arrived at under RCW 13.32A.090(2)(e), either the child or parent may file with the juvenile court a petition to approve an alternative residential placement. [1979 c 155 § 26.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.130 Child admitted to crisis residential center—Maximum hours of custody—Reconciliation effort—Information to parents upon retaining custody—Written statement of services and rights. A child admitted to a crisis residential center under this chapter who is not returned to the home of his or her parent or who is not placed in an alternative residential placement under an agreement between the parent and child, shall, except as provided for by RCW 13.32A.140 and 13.32A.160(2), reside in such placement under the rules and regulations established for the center for a period not to exceed seventy-two hours, excluding Saturdays, Sundays, and holidays, from the time of intake, except as otherwise provided by this chapter. Crisis residential center staff shall make a concerted effort to achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within forty-eight hours, excluding Saturdays, Sundays and holidays, from the time of intake, and if the person in charge of the center does not consider it likely that reconciliation will be achieved within the seventy-two hour period, then the person in charge shall inform the parent and child of (1) the availability of counseling services; (2) the right to file a petition for an alternative residential placement and to obtain assistance in filing the petition; and (3) the right to request a review of such a placement: *Provided*, That at no time shall information regarding a parent's or child's rights be withheld if requested: *Provided further*, That the department shall develop and distribute to all law enforcement agencies and to each crisis residential center administrator a written statement delineating such services and rights. Every officer taking a child into custody shall provide the child and his or her parent(s) or responsible adult with whom the child is placed with a copy of such statement. In addition, the administrator of the facility or his or her designee shall provide every resident and parent with a copy of such statement. [1985 c 257 § 9; 1981 c 298 § 9; 1979 c 155 § 27.]

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.32A.140 Alternative residential placement—Department to file petition for, when—Procedure. The department shall file a petition to approve an alternative residential placement on behalf of a child under any of the following sets of circumstances:

(1) The child has been admitted to a crisis residential center or has been placed with a responsible person other than his or her parent, and:

(a) The parent has been notified that the child was so admitted or placed;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No agreement between the parent and the child as to where the child shall live has been reached;

(d) No petition requesting approval of an alternative residential placement has been filed by either the child or parent or legal custodian; and

(e) The child has no suitable place to live other than the home of his or her parent.

(2) The child has been admitted to a crisis residential center and:

(a) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such placement;

(b) The staff, after searching with due diligence, have been unable to contact the parent of such child; and

(c) The child has no suitable place to live other than the home of his or her parent.

(3) An agreement between parent and child made pursuant to RCW 13.32A.090(2)(e) or pursuant to RCW 13.32A.120(1) is no longer acceptable to parent or child, and:

(a) The party to whom the arrangement is no longer acceptable has so notified the department;

(b) Seventy-two hours, including Saturdays, Sundays, and holidays, have passed since such notification;

(c) No new agreement between parent and child as to where the child shall live has been reached;

(d) No petition requesting approval of an alternative residential placement has been filed by either the child or the parent; and

(e) The child has no suitable place to live other than the home of his or her parent.

Under the circumstances of subsections (1), (2), or (3) of this section, the child shall remain in a licensed child care facility, including but not limited to a crisis residential center, or in any other suitable residence to be determined by the department until an alternative residential placement petition filed by the department on behalf of the child is reviewed by the juvenile court and is resolved by such court. The department may authorize emergency medical or dental care for a child placed under this section. The state, when the department files a petition for alternative residential placement under this section, shall be represented as provided for in RCW 13.04.093. [1981 c 298 § 10; 1979 c 155 § 28.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.150 Alternative residential placement—Petition by child or parent for—Procedure. A child or a child's parent may file with the juvenile court a petition to approve an alternative residential placement for the child outside the parent's home. The department shall, when requested, assist either a parent or child in the filing of the petition. The petition shall only ask that

the placement of a child outside the home of his or her parent be approved. The filing of a petition to approve such placement is not dependent upon the court's having obtained any prior jurisdiction over the child or his or her parent, and confers upon the court a special jurisdiction to approve or disapprove an alternative residential placement. [1981 c 298 § 11; 1979 c 155 § 29.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.160 Alternative residential placement—Court action upon filing of petition—Child placement.

(1) When a proper petition is filed under RCW 13.32A.120, 13.32A.140 or 13.32A.150 the juvenile court shall: (a) Schedule a date for a fact-finding hearing; notify the parent and child of such date; (b) notify the parent of the right to be represented by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child; (d) inform the child and his or her parent of the legal consequences of the court approving or disapproving an alternative residential placement petition; and (e) notify all parties of their right to present evidence at the fact-finding hearing.

(2) Upon filing of an alternative residential placement petition, the child may be placed, if not already placed, by the department in a crisis residential center, foster family home, group home facility licensed under chapter 74.15 RCW, or any other suitable residence to be determined by the department.

(3) If the child has been placed in a foster family home or group care facility under chapter 74.15 RCW, the child shall remain there, or in any other suitable residence as determined by the department, pending resolution of the alternative residential placement petition by the court. Any placement may be reviewed by the court within three court days upon the request of the juvenile or the juvenile's parent. [1979 c 155 § 30.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.170 Alternative residential placement—Fact-finding hearing—Three-month placement disposition plan—Hearing, when—Approval or denial of petition—Contempt proceedings, when. (1) The court shall hold a fact-finding hearing to consider a proper petition and may approve or deny alternative residential placement giving due weight to the intent of the legislature that families have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. The court may approve an order stating that the child shall be placed in a residence other than the home of his or her parent only if it is established by a preponderance of the evidence that:

(a) The petition is not capricious;

(b) The petitioner, if a parent or the child, has made a reasonable effort to resolve the conflict;

(c) The conflict which exists cannot be resolved by delivery of services to the family during continued placement of the child in the parental home; and

(d) 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.

The court may not grant a petition filed by the child or the department if it is established that the petition is based only upon a dislike of reasonable rules or reasonable discipline established by the parent.

(2) The order approving out-of-home placement shall direct the department to submit a disposition plan for a three-month placement of the child that is designed to reunite the family and resolve the family conflict. Such plan shall delineate any conditions or limitations on parental involvement. In making the order, the court shall further direct the department to make recommendations, as to which agency or person should have physical custody of the child, as to which parental powers should be awarded to such agency or person, and as to parental visitation rights. The court may direct the department to consider the cultural heritage of the child in making its recommendations.

(3) The hearing to consider the recommendations of the department for a three-month disposition plan shall be set no later than fourteen days after the approval of the court of a petition to approve alternative residential placement. Each party shall be notified of the time and place of such disposition hearing.

(4) If the court approves or denies a petition for an alternative residential placement, a written statement of the reasons shall be filed. If the court denies a petition requesting that a child be placed in a residence other than the home of his or her parent, the court shall enter an order requiring the child to remain at or return to the home of his or her parent.

(5) If the court denies the petition, the court shall impress upon the party filing the petition of the legislative intent to restrict the proceedings to situations where a family conflict is so great that it cannot be resolved by the provision of in-home services.

(6) A child who fails to comply with a court order directing that the child remain at or return to the home of his or her parent shall be subject to contempt proceedings, as provided in this chapter, but only if the non-compliance occurs within ninety calendar days after the day of the order. [1987 c 524 § 1; 1985 c 257 § 10; 1984 c 188 § 1; 1981 c 298 § 12; 1979 c 155 § 31.]

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.175 Alternative residential placement—Contribution to child's support, when—Enforcement of order. In any proceeding in which the court approves an alternative residential placement, the court shall inquire into the ability of parents to contribute to the child's support. If the court finds that the parents are able to

contribute to the support of the child, the court shall order them to make such support payments as the court deems equitable. The court may enforce such an order by execution or in any way in which a court of equity may enforce its orders. However, payments shall not be required of a parent who has both opposed the placement and continuously sought reconciliation with, and the return of, the child. All orders entered in a proceeding approving alternative residential placement shall be in compliance with the provisions of RCW 26.23.050. [1987 c 435 § 13; 1981 c 298 § 15.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.180 Three-month placement disposition plan—Hearing—Court order—No placement in secure residence. (1) At a dispositional hearing held to consider the three-month dispositional plan presented by the department the court shall consider all such recommendations included therein. The court, consistent with the stated goal of resolving the family conflict and reuniting the family, may modify such plan and shall make its dispositional order for a three-month out-of-home placement for the child. The court dispositional order shall specify the person or agency with whom the child shall be placed, those parental powers which will be temporarily awarded to such agency or person including but not limited to the right to authorize medical, dental, and optical treatment, and parental visitation rights. Any agency or residence at which the child is placed must, at a minimum, comply with minimum standards for licensed family foster homes.

(2) No placement made pursuant to this section may be in a secure residence as defined by the federal Juvenile Justice and Delinquency Prevention Act of 1974 and clarifying interpretations and regulations promulgated thereunder. [1979 c 155 § 32.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.190 Three-month placement dispositional order—Review of in subsequent hearings—Time limitation on out-of-home placement once hearings commence. (1) Upon making a dispositional order under RCW 13.32A.180, the court shall schedule the matter on the calendar for review within three months, advise the parties of the date thereof, appoint legal counsel and/or a guardian ad litem to represent the child at the review hearing, advise parents of their right to be represented by legal counsel at the review hearing, and notify the parties of their rights to present evidence at the hearing. Where resources are available, the court shall encourage the parent and child to participate in mediation programs for reconciliation of their conflict.

(2) At the review hearing, the court shall approve or disapprove the continuation of the dispositional plan in accordance with the goal of resolving the conflict and reuniting the family which governed the initial approval. The court shall determine whether reasonable efforts have been made to reunify the family and make it possible for the child to return home. The court is authorized

to discontinue the placement and order that the child return home if the court has reasonable grounds to believe that the parents have displayed concerted efforts to utilize services and resolve the conflict and the court has reason to believe that the child's refusal to return home is capricious. If out-of-home placement is continued, the court may modify the dispositional plan.

Out-of-home placement may not be continued past one hundred eighty days from the day the review hearing commenced. The court shall order that the child return to the home of the parent at the expiration of the placement. If continued out-of-home placement is disapproved, the court shall enter an order requiring that the child return to the home of the child's parent. [1984 c 188 § 2; 1981 c 298 § 13; 1979 c 155 § 33.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.200 Hearings under chapter—Time or place—General public excluded. All hearings pursuant to this chapter may be conducted at any time or place within the county of the residence of the parent and such cases shall not be heard in conjunction with the business of any other division of the superior court. The general public shall be excluded from hearings and only such persons who are found by the court to have a direct interest in the case or the work of the court shall be admitted to the proceedings. [1979 c 155 § 34.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

13.32A.250 Failure to comply with order as contempt—Procedure—Motion for—Penalties. (1) Failure by a party to comply with an order entered under this chapter is punishable as contempt.

(2) Contempt under this section is punishable by a fine of up to one hundred dollars and imprisonment for up to seven days, or both.

(3) A child found in contempt under this section shall be imprisoned only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) The procedure in a contempt proceeding held under this section is governed by RCW 7.20.040 through 7.20.080, as now law or hereafter amended.

(5) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter. [1981 c 298 § 14.]

Severability—1981 c 298: See note following RCW 13.32A.040.

13.32A.260 Implementation and enforcement of juvenile justice laws—Reports. See RCW 13.04.460.

Chapter 13.34

JUVENILE COURT ACT IN CASES RELATING TO DEPENDENCY OF A CHILD AND THE TERMINATION OF A PARENT AND CHILD RELATIONSHIP

Sections	
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Procedures for families in conflict, interstate compact to apply, when: RCW 13.32A.110.

13.34.010 Short title. This chapter shall be known as the "Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship". [1977 ex.s. c 291 § 29.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child. The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. [1987 c 524 § 2; 1977 ex.s. c 291 § 30.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.030 Definitions—"Child," "juvenile," "dependent child." For purposes of this chapter:

(1) "Child" and "juvenile" means any individual under the age of eighteen years;

(2) "Dependent child" means any child:

(a) Who has been abandoned; that is, where the child's parent, guardian, or other custodian has evidenced either by statement or conduct, a settled intent to forego, for an extended period, all parental rights or all parental responsibilities despite an ability to do so;

(b) Who is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Who has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Who is developmentally disabled, as defined in RCW 71.20.016 and whose parent, guardian, or legal custodian together with the department determines that services appropriate to the child's needs can not be provided in the home. However, (a), (b), and (c) of this subsection may still be applied if other reasons for removal of the child from the home exist. [1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in

family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.] For codification of 1983 c 311, see Codification Tables, Volume 0.

Severability—1982 c 129: See note following RCW 9A.04.080.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.040 Petition to court to deal with dependent child. 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 praying that the superior court deal with such child as provided in this chapter: *Provided*, That in counties having paid probation officers, such officers shall, as far as possible, first determine if such petition is reasonably justifiable. Such petition shall be verified and shall contain a statement of facts constituting such dependency, as defined in this chapter, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of such dependent child. There shall be no fee for filing such petitions. [1977 ex.s. c 291 § 32; 1913 c 160 § 5; RRS § 1987-5. Formerly RCW 13.04.060.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.050 Court order to take child into custody, when. The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if a petition is filed with the juvenile court alleging that the child is dependent and the court finds reasonable grounds to believe the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody. [1979 c 155 § 38; 1977 ex.s. c 291 § 33.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.055 Custody by law enforcement officer—Release from liability. (1) A law enforcement officer shall take into custody a child taken in violation of RCW 9A.40.060 or 9A.40.070. The law enforcement officer shall make every reasonable effort to avoid placing additional trauma on the child by obtaining such custody at times and in a manner least disruptive to the child. The law enforcement officer shall return the child to the person or agency having the right to physical custody unless the officer has reasonable grounds to believe the child should be taken into custody under RCW 13.34.050 or 26.44.050. If there is no person or agency having the right to physical custody available to take custody of the child, the officer may place the child in shelter care as provided in RCW 13.34.060.

(2) A law enforcement officer or public employee acting reasonably and in good faith shall not be held liable in any civil action for returning the child to a person having the apparent right to physical custody. [1984 c 95 § 4.]

Severability—1984 c 95: See note following RCW 9A.40.060.

13.34.060 Placing child in shelter care—Court procedures and rights of parties—Release from, when—Amendments to orders. (1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. "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 that section. Whenever a child is taken into such custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing if one is requested.

(2) The juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(3) At the commencement of the shelter care hearing the court shall advise the parties of their basic rights as provided in RCW 13.34.090 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived.

(4) The court shall examine the need for shelter care. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(5) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.

(6) 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:

(a) 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

(b)(i) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(ii) The release of such child would present a serious threat of substantial harm to such child; or

(iii) The parent, guardian, or custodian to whom the child could be released is alleged to have violated RCW 9A.40.060 or 9A.40.070.

If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order.

(7) 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.

(8) 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 detained for longer than thirty days without an order, signed by the judge, authorizing continued shelter care. [1987 c 524 § 4. Prior: 1984 c 188 § 3; 1984 c 95 § 5; 1983 c 246 § 1; 1982 c 129 § 5; 1979 c 155 § 39; 1977 ex.s. c 291 § 34.]

Severability—1984 c 95: See note following RCW 9A.40.060.

Severability—1982 c 129: See note following RCW 9A.04.080.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear. (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. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons. The hearing on the petition shall be set for a time no later than forty-five days after the filing of the petition and shall be held at such time, unless for good cause the hearing is continued to a later time at the request of either party.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel.

(4) 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.

(5) 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 to the place of shelter designated by the court.

(6) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (4) or (5) of this section, and if the person fails to abide by the order, he 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.

(7) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally at least five 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 thereof by certified mail at least ten 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 thereof 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.

(8) 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 of social and health services social worker.

(9) In any proceeding brought under this chapter where the court knows or has reason to know that the child involved is a member of an Indian tribe, notice of the pendency of the proceeding shall also be sent by registered mail, return receipt requested, to the child's tribe. If the identity or location of the tribe cannot be determined, such notice shall be transmitted to the secretary of the interior of the United States. [1983 c 311 § 3; 1983 c 3 § 16; 1979 c 155 § 40; 1977 ex.s. c 291 § 35; 1913 c 160 § 6; RRS § 1987-6. Formerly RCW 13.04.070.]

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.080 Summons when petition filed—**Publication of.** In a dependency case where it appears by the petition or verified statement, that the person standing in the position of natural or legal guardian of the person of any child, is a nonresident of this state, or that the name or place of residence or whereabouts of such person is unknown, as well as in all cases where, after due diligence, the officer has been unable to make service of the summons or notice provided for in RCW 13.34.070, and a copy of the notice has been deposited in the post office, postage prepaid, directed to such person at his last known place of residence, the court shall direct the clerk to publish notice in a legal newspaper printed in the county, qualified to publish summons, once a week for three consecutive weeks, with the first publication of the notice to be at least twenty-five days prior to the date fixed for the hearing. Such notice shall be directed to the parent, parents, or other person claiming the right to the custody of the child, if their names are known, or if unknown, the phrase "To whom it may concern" shall be used and apply to, and be binding upon, any such persons whose names are unknown. The name of the court, the name of the child (or children if of one family), the date of the filing of the petition, the date of hearing, and the object of the proceeding in general terms shall be set forth, and the whole shall be subscribed by the clerk. There shall be filed with the clerk an affidavit showing due publication of the notice, and the cost of publication shall be paid by the county at not to exceed the rate paid by the county for other legal notices. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated as provided in this section. [1979 c 155 § 41; 1977 ex.s. c 291 § 36; 1961 c 302 § 4; 1913 c 160 § 7; RRS § 1987-7. Formerly RCW 13.04.080.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.090 Inherent rights under chapter proceedings. Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-finder.

At all stages of a proceeding in which a child is alleged to be dependent pursuant to RCW 13.34.030(2), the child's parent or guardian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. [1979 c 155 § 42; 1977 ex.s. c 291 § 37.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

Notice of rights: RCW 26.44.105.

13.34.100 Appointment of attorney and/or guardian ad litem—**Limitation**—**Membership in Indian tribe**

or band to be in report. The court, at any stage of a proceeding under this chapter, may appoint an attorney and/or a guardian ad litem for a child who is a party to the proceedings. A party to the proceeding or the party's employee or representative shall not be so appointed. Such attorney and/or guardian ad litem shall receive all notice contemplated for a parent in all proceedings under this chapter. A report by the guardian ad litem to the court shall contain, where relevant, information on the legal status of a child's membership in any Indian tribe or band. [1979 c 155 § 43; 1977 ex.s. c 291 § 38.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.110 Hearings, fact-finding and disposition—Time and place, notice—Not generally public—Notes and records. The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor, and after it has announced its findings of fact shall hold a hearing to consider disposition of the case immediately following the fact-finding hearing or at a continued hearing within fourteen days or longer for good cause shown. The parties need not appear at the fact-finding or dispositional hearing if all are in agreement; but the court shall receive and review a social study before entering an order based on agreement. No social file or social study may be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence. Notice of the time and place of the continued hearing may be given in open court. If notice in open court is not given to a party, that party shall be notified by mail of the time and place of any continued hearing.

All hearings may be conducted at any time or place within the limits of the county, and such cases may not be heard in conjunction with other business of any other division of the superior court. The general public shall be excluded, and only such persons may be admitted who are found by the judge to have a direct interest in the case or in the work of the court.

Stenographic notes or any device which accurately records the proceedings may be required as provided in other civil cases pursuant to RCW 2.32.200. [1983 c 311 § 4; 1979 c 155 § 44; 1977 ex.s. c 291 § 39; 1961 c 302 § 5. Prior: 1913 c 160 § 10, part; RCW 13.04.090, part. Formerly RCW 13.04.091.]

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.120 Social study and predisposition study to be utilized at disposition hearing—Contents—Notice to parents. (1) To aid the court in its decision on disposition, a social study, consisting of a written evaluation of matters relevant to the disposition of the case, shall be

made by the person or agency filing the petition. The study shall include all social records and may also include facts relating to the child's cultural heritage, and shall be made available to the court. The court shall consider the social file and social study at the disposition hearing in addition to evidence produced at the fact-finding hearing. At least ten working days before the disposition hearing, the department shall mail to the parent and his or her attorney a copy of the agency's social study and proposed service plan, which shall be in writing or in a form understandable to the parents or custodians. In addition, the department shall provide an opportunity for parents to review and comment on the plan at the community service office. If the parents disagree with the agency's plan or any part thereof, the parents shall submit to the court at least twenty-four hours before the hearing, in writing, or signed oral statement, an alternative plan to correct the problems which led to the finding of dependency. This section shall not interfere with the right of the parents or custodians to submit oral arguments regarding the disposition plan at the hearing.

(2) In addition to the requirements set forth in subsection (1) of this section, a predisposition study to the court in cases of dependency alleged pursuant to RCW 13.34.030(2) (b) or (c) 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 programs, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such programs 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;

(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 which have been considered and rejected; 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. This section should include an exploration of the nature of the parent-child attachment and the meaning of separation and loss to both the parents and the child;

(e) A description of the steps that will be taken to minimize harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary. [1987 c 524 § 5; 1979 c 155 § 45; 1977 ex.s. c 291 § 40.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.130 Order of disposition for certain dependent children, alternatives—Later review hearing—Petition seeking termination of parent-child relationship. If, after a fact-finding hearing pursuant to RCW 13.34.110, as now or hereafter amended, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030(2); after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Such an order 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 and that:

(i) There is no parent or guardian available to care for such child;

(ii) The child is unwilling to reside in the custody of the child's parent, guardian, or legal custodian;

(iii) The parent, guardian, or legal custodian is not willing to take custody of the child;

(iv) A manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home; or

(v) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties.

(a) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody and what requirements the parents must meet in order to resume custody.

(b) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement.

(c) 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.

(d) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(3) The status of all children found to be dependent shall be reviewed by the court at least every six months at a hearing in which it shall be determined whether court supervision should continue.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion;

(ii) The extent to which the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(iii) Whether the agency is satisfied with the cooperation given to it by the parents;

(iv) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered; and

(v) When return of the child can be expected.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed. [1984 c 188 § 4. Prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.150 Modification of orders. Any order made by the court in the case of a dependent child may at any time be changed, modified or set aside, as to the judge may seem meet and proper. [1977 ex.s. c 291 § 43; 1913 c 160 § 15; RRS § 1987-15. Formerly RCW 13.04.150.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.160 Order of support for dependent child. In any case in which the court shall find the child dependent, it may in the same or subsequent proceeding upon the parent or parents, guardian, or other person having custody of said child, being duly summoned or voluntarily appearing, proceed to inquire into the ability of such persons or person able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. All child support orders entered pursuant to this chapter shall be in compliance with the provisions of RCW 26.23.050. [1987 c 435 § 14; 1981 c 195 § 8; 1977 ex.s. c 291 § 44; 1969 ex.s. c 138 § 1; 1961 c 302 § 7; 1913 c 160 § 8; RRS § 1987-8. Formerly RCW 13.04.100.]

Effective date—1987 c 435: See RCW 26.23.900.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.165 Contempt—Grounds—Motions—Penalty. (1) Failure by a party to comply with an order entered under this chapter is punishable as contempt.

(2) Contempt under this section is punishable by confinement for up to seven days.

(3) A child found in contempt under this section shall be confined only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) The procedure in a contempt proceeding under this section is governed by RCW 7.20.040 through 7.20.080.

(5) A motion for contempt may be made by a parent, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order entered pursuant to this chapter. [1985 c 257 § 1.]

Severability—1985 c 257: "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." [1985 c 257 § 12.]

13.34.170 Judgment for financial support—Enforcement. In any case in which an order or decree of the juvenile court requiring a parent or parents, guardian, or other person having custody of a child to pay for shelter care and/or support of such child is not complied with, the court may, upon such person or persons being duly summoned or voluntarily appearing, proceed to inquire into the amount due upon said order or decree and enter judgment for such amount against the defaulting party or parties, and such judgment shall be docketed as are other judgments for the payment of money.

In such judgments, the county in which the same are entered shall be denominated the judgment creditor, or the state may be the judgment creditor where the child is in the custody of a state agency and said judgments may be enforced by the prosecuting attorney of such county, or the attorney general where the state is the

judgment creditor and any moneys recovered thereon shall be paid into the registry of the juvenile court and shall be disbursed to such person, persons, agency, or governmental department as the court shall find to be entitled thereto.

Such judgments shall remain as valid and enforceable judgments for a period of ten years subsequent to the entry thereof. [1981 c 195 § 9; 1977 ex.s. c 291 § 45; 1961 c 302 § 8; 1955 c 188 § 1. Formerly RCW 13.04.105.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Financial responsibility for costs of detention: RCW 13.16.085.

13.34.180 Order terminating parent and child relationship—Petition for—Filing—Allegations. A petition seeking termination of a parent and child relationship may be filed in juvenile court. Such petition shall conform to the requirements of RCW 13.34.040 and shall allege:

(1) That the child has been found to be a dependent child under RCW 13.34.030(2); and

(2) That the court has entered a dispositional order pursuant to RCW 13.34.130; and

(3) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(2); and

(4) That the services ordered under RCW 13.34.130 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided; and

(5) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(6) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home;

(7) In lieu of the allegations in subsections (1) through (6) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found. [1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.190 Order terminating parent and child relationship—Hearings—Granting of, when. After hearings pursuant to RCW 13.34.110, the court may enter an order terminating all parental rights to a child if the court finds that:

(1) (a) The allegations contained in the petition as provided in RCW 13.34.180 (1) through (6) are established by clear, cogent, and convincing evidence; or (b)

RCW 13.34.180(3) may be waived because the allegations under RCW 13.34.180 (1), (2), (4), (5), and (6) are established beyond a reasonable doubt; or (c) the allegation under RCW 13.34.180(7) is established beyond a reasonable doubt; and

(2) Such an order is in the best interests of the child. [1979 c 155 § 48; 1977 ex.s. c 291 § 47.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.200 Order terminating parent and child relationship—Rights of parties when granted. (1) Upon the termination of parental rights pursuant to RCW 13.34.180, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child: *Provided*, That any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent and the order shall so state.

(2) An order terminating the parent and child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States, nor shall any action under this chapter be deemed to affect any rights and benefits that a native American child derives from the child's descent from a member of a federally recognized Indian tribe. [1977 ex.s. c 291 § 48.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.210 Order terminating parent and child relationship—Custody where there remains no parent having parental rights. If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department of social and health services or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption, or in the absence thereof in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a general guardian of the child has not been appointed by the court, the child shall be returned to the court for entry of further orders for his or her care, custody, and control, and the court shall

review the case every six months thereafter until a decree of adoption is entered. [1979 c 155 § 49; 1977 ex.s. c 291 § 49.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.34.220 Order terminating parent and child relationship—Prevailing party to present findings, etc., to court, when. Written findings of fact, conclusions of law, and orders of termination of parent/child relationships made under this chapter shall be presented to the court by the prevailing party within thirty days of the court's decision unless extended by the court for good cause shown. [1979 c 155 § 50.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.230 Guardianship for dependent child—Petition for—Notice to, intervention by, department. Any party to a dependency proceeding, including the supervising agency, may file a petition in juvenile court requesting that guardianship be created as to a dependent child. The department of social and health services shall receive notice of any guardianship proceedings and have the right to intervene in the proceedings. [1981 c 195 § 1; 1979 c 155 § 51.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.231 Guardianship for dependent child—Hearing—Rights of parties—Rules of evidence—Guardianship established, when. At the hearing on a guardianship petition, all parties have the right to present evidence and cross examine witnesses. The rules of evidence apply to the conduct of the hearing. A guardianship may be established if the court finds by a preponderance of the evidence that:

(1) The child has been found to be a dependent child under RCW 13.34.030(2);

(2) A dispositional order has been entered pursuant to RCW 13.34.130;

(3) The child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(2);

(4) The services ordered under RCW 13.34.130 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;

(5) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(6) A guardianship rather than termination of the parent-child relationship or continuation of the child's current dependent status would be in the best interest of the family. [1981 c 195 § 2.]

13.34.232 Guardianship for dependent child—Order, contents. If the court has made a finding under RCW 13.34.231, it shall enter an order establishing a guardianship for the child. The order shall:

- (1) Appoint a person or agency to serve as guardian;
- (2) Specify the guardian's rights and responsibilities concerning the care, custody, and control of the child. A guardian shall not have the authority to consent to the child's adoption;
- (3) Specify an appropriate frequency of visitation between the parent and the child; and
- (4) Specify the need for any continued involvement of the supervising agency and the nature of that involvement, if any. [1981 c 195 § 3.]

13.34.233 Guardianship for dependent child—Modification of order. Any party may seek a modification of the guardianship order under RCW 13.34.150. [1981 c 195 § 4.]

13.34.234 Guardianship for dependent child—Guardian may receive foster care payments. Establishment of a guardianship under RCW 13.34.231 and 13.34.232 does not preclude a guardian from receiving foster care payments. [1981 c 195 § 5.]

13.34.235 Guardianship for dependent child—Review hearing requirements not applicable. A guardianship established under RCW 13.34.231 and 13.34.232 is not subject to the review hearing requirements of RCW 13.34.130. [1981 c 195 § 6.]

13.34.236 Guardianship for dependent child—Qualifications for guardian. Any person over the age of twenty-one years who is not otherwise disqualified by this section, any nonprofit corporation, or any Indian tribe may be appointed the guardian of a child under RCW 13.34.232. No person is qualified to serve as a guardian who: (1) Is of unsound mind; (2) has been convicted of a felony or misdemeanor involving moral turpitude; or (3) is a person whom the court finds unsuitable. [1981 c 195 § 7.]

13.34.240 Acts, records and proceedings of Indian tribe or band given full faith and credit. The courts of this state shall give full faith and credit as provided for in the United States Constitution to the public acts, records, and judicial proceedings of any Indian tribe or band in any proceeding brought pursuant to this chapter to the same extent that full faith and credit is given to the public acts, records, and judicial proceedings of any other state. [1979 c 155 § 52.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.245 Voluntary consent to foster care placement for Indian child—Validation—Withdrawal of consent—Termination. (1) Where any parent or Indian custodian voluntarily consents to foster care placement of an Indian child and a petition for dependency has not been filed regarding the child, such consent shall not be

valid unless executed in writing before the court and filed with the court. The consent shall be accompanied by the written certification of the court that the terms and consequences of the consent were fully explained in detail to the parent or Indian custodian during the court proceeding and were fully understood by the parent or Indian custodian. The court shall also certify in writing either that 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 given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) To obtain court validation of a voluntary consent to foster care placement, any person may file a petition for validation alleging that there is located or residing within the county an Indian child whose parent or Indian custodian wishes to voluntarily consent to foster care placement of the child and requesting that the court validate the consent as provided in this section. The petition shall contain the name, date of birth, and residence of the child, the names and residences of the consenting parent or Indian custodian, and the name and location of the Indian tribe in which the child is a member or eligible for membership. The petition shall state whether the placement preferences of 25 U.S.C. Sec. 1915 (b) or (c) will be followed. Reasonable attempts shall be made by the petitioner to ascertain and set forth in the petition the identity, location, and custodial status of any parent or Indian custodian who has not consented to foster care placement and why that parent or Indian custodian cannot assume custody of the child.

(3) Upon filing of the petition for validation, the clerk of the court shall schedule the petition for a hearing on the court validation of the voluntary consent no later than forty-eight hours after the petition has been filed, excluding Saturdays, Sundays, and holidays. Notification of time, date, location, and purpose of the validation hearing shall be provided as soon as possible to the consenting parent or Indian custodian, the department or other child-placing agency which is to assume custody of the child pursuant to the consent to foster care placement, and the Indian tribe in which the child is enrolled or eligible for enrollment as a member. If the identity and location of any nonconsenting parent or Indian custodian is known, reasonable attempts shall be made to notify the parent or Indian custodian of the consent to placement and the validation hearing. Notification under this subsection may be given by the most expedient means, including, but not limited to, mail, personal service, telephone, and telegraph.

(4) Any parent or Indian custodian may withdraw consent to a voluntary foster care placement, made under this section, at any time. Unless the Indian child has been taken in custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the Indian child shall be returned to the parent or Indian custodian upon withdrawal of consent to foster care placement of the child.

(5) Upon termination of the voluntary foster care placement and return of the child to the parent or Indian custodian, the department or other child placing agency which had assumed custody of the child pursuant to the consent to foster care placement shall file with the court written notification of the child's return and shall also send such notification to the Indian tribe in which the child is enrolled or eligible for enrollment as a member and to any other party to the validation proceeding including any noncustodial parent. [1987 c 170 § 2.]

Severability—1987 c 170: See note following RCW 13.04.030.

13.34.250 Preference characteristics when placing Indian child in foster care home. Whenever appropriate, an Indian child shall be placed in a foster care home with the following characteristics which shall be given preference in the following order:

- (1) Relatives;
- (2) An Indian family of the same tribe as the child;
- (3) An Indian family of a Washington Indian tribe of a similar culture to that tribe;
- (4) Any other family which can provide a suitable home for an Indian child, such suitability to be determined through consultation with a local Indian child welfare advisory committee. [1979 c 155 § 53.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.34.300 Failure to cause juvenile to attend school as evidence under neglect petition. The legislature finds that it is the responsibility of the custodial parent, parents or guardian to ensure that children within the custody of such individuals attend school as provided for by law. To this end, while a parent's failure to cause a juvenile to attend school should not alone provide a basis for a neglect petition against the parent or guardian, when a neglect petition is filed on the basis of other evidence, a parent or guardian's failure to take reasonable steps to ensure that the juvenile attends school may be used as evidence with respect to the question of the appropriate disposition of a neglect petition. [1979 ex.s. c 201 § 3.]

13.34.310 Implementation and enforcement of juvenile justice laws—Reports. See RCW 13.04.460.

Chapter 13.40

JUVENILE JUSTICE ACT OF 1977

Sections

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- 13.40.440 Chapter 9.92 RCW not to affect dispositions under juvenile justice act.

13.40.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders.

1977 ex.s. c 291: "(1) There is appropriated for the period July 1, 1978, to June 30, 1979, from the general fund nine hundred eighty-three thousand six hundred dollars to be allocated to counties for the cost of operating diversion units as required by this chapter.

(2) The secretary shall administer the funds and shall promulgate, pursuant to chapter 34.04 RCW, rules establishing a planning process and standards which meet the intent of this chapter. The secretary shall also monitor and evaluate, against established standards, all programs and services funded by this appropriation.

(3) The total sum shall be allocated by the secretary to the counties. Diversion units funded by this section shall be administered and operated separately from the court: *Provided*, That counties of classes other than AA and A may request for an exemption from this requirement. The secretary may grant such exemption if it is clearly demonstrated that resources do not exist nor can be established in such county to operate diversion units separately from the court.

(4) In meeting the requirements of this chapter, there shall be a maintenance of effort whereby counties shall exhaust existing resources prior to the utilization of funds appropriated by this section.

(5) It is the intent of the legislature that these funds shall be the maximum amount necessary to meet the requirement of this chapter for the stated period. Courts shall be required to provide diversion programs and services to the extent made possible by available sources. In addressing diverted youths, a resource priority continuum shall be developed whereby the highest priority in resource allocation shall be given to diverted youths who have inflicted bodily harm while the lowest priority shall be given to diverting youths who have committed victimless crimes or minor property offenses." [1977 ex.s. c 291 § 79.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Health and dental examination and care for juveniles in detention facility—Consent: RCW 13.04.047.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Treatment of juvenile offenders: RCW 74.14A.030, 74.14A.040.

13.40.010 Short title—Legislative intent—Chapter purpose. (1) This chapter shall be known and cited as the Juvenile Justice Act of 1977.

(2) It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders, as defined by this chapter, be established. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that both communities and the juvenile courts carry out their functions consistent with this intent. To effectuate these policies, it shall be the purpose of this chapter to:

- (a) Protect the citizenry from criminal behavior;
- (b) Provide for determining whether accused juveniles have committed offenses as defined by this chapter;
- (c) Make the juvenile offender accountable for his or her criminal behavior;
- (d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;
- (e) Provide due process for juveniles alleged to have committed an offense;
- (f) Provide necessary treatment, supervision, and custody for juvenile offenders;
- (g) Provide for the handling of juvenile offenders by communities whenever consistent with public safety;
- (h) Provide for restitution to victims of crime;
- (i) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services at the state and local levels; and

(j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitations of the courts, institutions, and community services. [1977 ex.s. c 291 § 55.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.020 Definitions. For the purposes of this chapter:

(1) "Serious offender" means a person fifteen years of age or older who has committed an offense which if committed by an adult would be:

- (a) A class A felony, or an attempt to commit a class A felony;
- (b) Manslaughter in the first degree or rape in the second degree; or

(c) Assault in the second degree, extortion in the first degree, indecent liberties, kidnapping in the second degree, robbery in the second degree, burglary in the second degree, or statutory rape in the second degree, where such offenses include the infliction of bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator is armed with a deadly weapon or firearm as defined in RCW 9A.04.110;

(2) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense;

(3) "Community supervision" means an order of disposition by the court of an adjudicated youth. A community supervision order for a single offense may be for a period of up to one year and include one or more of the following:

- (a) A fine, not to exceed one hundred dollars;
- (b) Community service not to exceed one hundred fifty hours of service;
- (c) Attendance of information classes;
- (d) Counseling; or
- (e) Such other services to the extent funds are available for such services, conditions, or limitations as the court may require which may not include confinement;

(4) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a facility operated by or pursuant to a contract with any county. Confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(5) "Court", when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(6) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

- (a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history;

(7) "Department" means the department of social and health services;

(8) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender or any other person or entity with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.04.040, as now or hereafter amended, or any person or entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter;

(9) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(10) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court;

(11) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(12) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(13) "Middle offender" means a person who has committed an offense and who is neither a minor or first offender nor a serious offender;

(14) "Minor or first offender" means a person sixteen years of age or younger whose current offense(s) and criminal history fall entirely within one of the following categories:

- (a) Four misdemeanors;
- (b) Two misdemeanors and one gross misdemeanor;
- (c) One misdemeanor and two gross misdemeanors;
- (d) Three gross misdemeanors;
- (e) One class C felony and one misdemeanor or gross misdemeanor;

(f) One class B felony except: Any felony which constitutes an attempt to commit a class A felony; manslaughter in the first degree; rape in the second degree; assault in the second degree; extortion in the first degree; indecent liberties; kidnapping in the second degree; robbery in the second degree; burglary in the second degree; statutory rape in the second degree; vehicular homicide; or arson in the second degree.

For purposes of this definition, current violations shall be counted as misdemeanors;

(15) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(16) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(17) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, and lost wages resulting from physical injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(18) "Secretary" means the secretary of the department of social and health services;

(19) "Services" mean services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(20) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(21) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration. [1983 c 191 § 7; 1981 c 299 § 2; 1979 c 155 § 54; 1977 ex.s. c 291 § 56.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.025 Juvenile disposition standards commission—Duties—Members—Chairman—

Terms—Vacancies—Meetings—Compensation and expenses. (1) There is established a juvenile disposition standards commission to propose disposition standards to the legislature in accordance with RCW 13.40.030 and perform the other responsibilities set forth in this chapter.

(2) The commission shall be composed of the secretary or the secretary's designee and the following nine members appointed by the governor, subject to confirmation by the senate: (a) A superior court judge; (b) a prosecuting attorney or deputy prosecuting attorney; (c) a law enforcement officer; (d) an administrator of juvenile court services; (e) a public defender actively practicing in juvenile court; (f) a county legislative official or county executive; and (g) three other persons who have demonstrated significant interest in the adjudication and disposition of juvenile offenders. In making the appointments, the governor shall seek the recommendations of the association of superior court judges in respect to the member who is a superior court judge; of Washington prosecutors in respect to the prosecuting attorney or deputy prosecuting attorney member; of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer; of juvenile court administrators in respect to the member who is a juvenile court administrator; and of the state bar association in respect to the public defender member; and of

the Washington association of counties in respect to the member who is either a county legislative official or county executive.

(3) The secretary or the secretary's designee shall serve as chairman of the commission.

(4) The secretary shall serve on the commission during the secretary's tenure as secretary of the department. The term of the remaining members of the commission shall be three years. The initial terms shall be determined by lot conducted at the commission's first meeting as follows: (a) Four members shall serve a two-year term; and (b) four members shall serve a three-year term. In the event of a vacancy, the appointing authority shall designate a new member to complete the remainder of the unexpired term.

(5) Commission members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members shall be compensated in accordance with RCW 43.03.240.

(6) The commission shall meet at least once every three months. [1986 c 288 § 8; 1984 c 287 § 11; 1981 c 299 § 3.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Legislative findings—**Severability**—**Effective date**—1984 c 287: See notes following RCW 43.03.220.

13.40.027 Juvenile disposition standards commission—Responsibilities generally—Department to assist. (1) It is the responsibility of the commission to: (a) (i) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally and (ii) specifically review the guidelines relating to the confinement of minor and first offenders as well as the use of diversion. The committee shall propose modifications to the legislature regarding subsection (1)(a)(ii) of this section by January 1, 1987; (b) solicit the comments and suggestions of the juvenile justice community concerning disposition standards; and (c) develop and propose to the legislature modifications of the disposition standards in accordance with RCW 13.40.030.

(2) It is the responsibility of the department to: (a) Provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders; (b) at the request of the commission, provide technical and administrative assistance to the commission in the performance of its responsibilities; and (c) provide the commission with recommendations for modification of the disposition standards. [1986 c 288 § 9; 1981 c 299 § 4.]

Severability—1986 c 288: See note following RCW 13.32A.050.

13.40.030 Disposition standards for offenses—Establishment, procedure—Scope—Legislative review. (1) (a) The juvenile disposition standards commission shall propose to the legislature no later than November 1st of each even-numbered year disposition standards for all offenses. The standards shall establish,

in accordance with the purposes of this chapter, ranges which may include terms of confinement and/or community supervision established on the basis of a youth's age, the instant offense, and the history and seriousness of previous offenses, but in no case may the period of confinement and supervision exceed that to which an adult may be subjected for the same offense(s). Standards proposed for offenders listed in RCW 13.40.020(1) shall include a range of confinement which may not be less than thirty days. No standard range may include a period of confinement which includes both more than thirty, and thirty or less, days. Disposition standards proposed by the commission shall provide that in all cases where a youth is sentenced to a term of confinement in excess of thirty days the department may impose an additional period of parole not to exceed eighteen months. Standards of confinement which may be proposed may relate only to the length of the proposed terms and not to the nature of the security to be imposed. In developing proposed disposition standards, the commission shall consider the capacity of the state juvenile facilities and the projected impact of the proposed standards on that capacity.

(b) The secretary shall submit guidelines pertaining to the nature of the security to be imposed on youth placed in his or her custody based on the age, offense(s), and criminal history of the juvenile offender. Such guidelines shall be submitted to the legislature for its review no later than November 1st of each even-numbered year. At the same time the secretary shall submit a report on security at juvenile facilities during the preceding two-year period. The report shall include the number of escapes from each juvenile facility, the most serious offense for which each escapee had been confined, the number and nature of offenses found to have been committed by juveniles while on escape status, the number of authorized leaves granted, the number of failures to comply with leave requirements, the number and nature of offenses committed while on leave, and the number and nature of offenses committed by juveniles while in the community on minimum security status; to the extent this information is available to the secretary. The department shall include security status definitions in the security guidelines it submits to the legislature pursuant to this section.

(2) If the commission fails to propose disposition standards as provided in this section, the existing standards shall remain in effect and may be adopted by the legislature or referred to the commission for modification as provided in subsection (3) of this section. If the standards are referred for modification, the provisions of subsection (4) shall be applicable.

(3) The legislature may adopt the proposed standards or refer the proposed standards to the commission for modification. If the legislature fails to adopt or refer the proposed standards to the commission by February 15th of the following year, the proposed standards shall take effect without legislative approval on July 1st of that year.

(4) If the legislature refers the proposed standards to the commission for modification on or before February

15th, the commission shall resubmit the proposed modifications to the legislature no later than March 1st. The legislature may adopt or modify the resubmitted proposed standards. If the legislature fails to adopt or modify the resubmitted proposed standards by April 1st, the resubmitted proposed standards shall take effect without legislative approval on July 1st of that year.

(5) In developing and promulgating the permissible ranges of confinement under this section the commission shall be subject to the following limitations:

(a) Where the maximum term in the range is ninety days or less, the minimum term in the range may be no less than fifty percent of the maximum term in the range;

(b) Where the maximum term in the range is greater than ninety days but not greater than one year, the minimum term in the range may be no less than seventy-five percent of the maximum term in the range; and

(c) Where the maximum term in the range is more than one year, the minimum term in the range may be no less than eighty percent of the maximum term in the range. [1985 c 73 § 1; 1983 c 191 § 6; 1981 c 299 § 5; 1979 c 155 § 55; 1977 ex.s. c 291 § 57.]

Effective date—1985 c 73: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 73 § 3.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.035 Disposition standards for offenses—

Effective date for certain standards. The standards submitted by the secretary to the legislature prior to November 1, 1978, pursuant to RCW 13.40.030, as now or hereafter amended, including any such standards as modified by the legislature and by the secretary as provided for by that section, shall take effect thirty days after March 29, 1979. [1979 c 155 § 56.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.40.036 State-wide standards for juvenile facilities—When effective.

The commission, in cooperation and consultation with the judiciary committees of the senate and house of representatives, shall propose to the legislature state-wide standards by November 1, 1987, on the following subjects:

(1) The detention intake procedures used and decisions made to release or detain youth in juvenile detention facilities;

(2) The use of punishment, security, and control mechanisms such as isolation, restraints, program restrictions, and the procedures required for their use;

(3) Availability and quality of health care;

(4) Inventory and storage of residents' belongings;

(5) Access to defense counsel;

(6) Residents' rights to communicate with persons outside the facility; and

(7) Information gathering and reporting necessary for educated decision-making by the commission and for

the proper monitoring of facilities for compliance with commission standards.

The standards proposed under this section shall become effective upon approval by the legislature. [1986 c 288 § 10.]

Severability—1986 c 288: See note following RCW 13.32A.050.

13.40.038 County juvenile detention facilities—

Policy. It is the policy of this state that all county juvenile detention facilities provide a humane, safe, and rehabilitative environment and that unadjudicated youth remain in the community whenever possible, consistent with public safety and the provisions of chapter 13.40 RCW. [1986 c 288 § 7.]

Severability—1986 c 288: See note following RCW 13.32A.050.

13.40.040 Taking juvenile into custody, grounds—

Detention of, grounds—Release on bond, conditions—Bail jumping. (1) A juvenile may be taken into custody:

(a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or

(b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section; or

(c) Pursuant to a court order that the juvenile be held as a material witness; or

(d) Where the secretary or the secretary's designee has suspended the parole of a juvenile offender.

(2) A juvenile may not be held in detention unless there is probable cause to believe that:

(a) The juvenile has committed an offense or has violated the terms of a disposition order; and

(i) The juvenile will likely fail to appear for further proceedings; or

(ii) Detention is required to protect the juvenile from himself or herself; or

(iii) The juvenile is a threat to community safety; or

(iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or

(v) The juvenile has committed a crime while another case was pending; or

(b) The juvenile is a fugitive from justice; or

(c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

(3) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

(4) A juvenile detained under this section may be released upon posting bond set by the court. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance.

The court shall advise the juvenile of any conditions specified in the order and may at any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping. [1979 c 155 § 57; 1977 ex.s. c 291 § 58.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.050 Detention, procedure when—Hearing, notice of, scope—Conditions to be imposed if continued detention unnecessary. (1) When a juvenile taken into custody is held in detention:

(a) An information, a community supervision modification or termination of diversion petition, or a parole modification petition shall be filed within seventy-two hours, Saturdays, Sundays, and holidays excluded, or the juvenile shall be released; and

(b) A detention hearing, a community supervision modification or termination of diversion petition, or a parole modification petition shall be held within seventy-two hours, Saturdays, Sundays, and holidays excluded, from the time of filing the information or petition, to determine whether continued detention is necessary under RCW 13.40.040.

(2) Notice of the detention hearing, stating the time, place, and purpose of the hearing, and stating the right to counsel, shall be given to the parent, guardian, or custodian if such person can be found and shall also be given to the juvenile if over twelve years of age.

(3) At the commencement of the detention hearing, the court shall advise the parties of their rights under this chapter and shall appoint counsel as specified in this chapter.

(4) The court shall, based upon the allegations in the information, determine whether the case is properly before it or whether the case should be treated as a diversion case under RCW 13.40.080. If the case is not properly before the court the juvenile shall be ordered released.

(5) Notwithstanding a determination that the case is properly before the court and that probable cause exists, a juvenile shall at the detention hearing be ordered released on the juvenile's personal recognizance pending further hearing unless the court finds detention is necessary under RCW 13.40.040 as now or hereafter amended.

(6) If detention is not necessary under RCW 13.40.040, as now or hereafter amended, the court shall impose the most appropriate of the following conditions or, if necessary, any combination of the following conditions:

(a) Place the juvenile in the custody of a designated person agreeing to supervise such juvenile;

(b) Place restrictions on the travel of the juvenile during the period of release;

(c) Require the juvenile to report regularly to and remain under the supervision of the juvenile court;

(d) Impose any condition other than detention deemed reasonably necessary to assure appearance as required; or

(e) Require that the juvenile return to detention during specified hours. [1979 c 155 § 58; 1977 ex.s. c 291 § 59.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.060 Jurisdiction of proceedings—Transfer of case and records, when—Change in venue, grounds. (1) Proceedings under this chapter shall be commenced in the county where the juvenile resides. However, proceedings may be commenced in the county where an element of the alleged criminal offense occurred if so requested by the juvenile or by the prosecuting attorney of the county where the incident occurred.

(2) If the hearing takes place in the county where an element of the alleged criminal offense occurred, the case and copies of all legal and social documents pertaining thereto may in the discretion of the court be transferred to the county where the juvenile resides for a disposition hearing. All costs and arrangements for care and transportation of the juvenile in custody shall be the responsibility of the receiving county as of the date of the transfer of the juvenile to such county, unless the counties otherwise agree.

(3) If the adjudicatory and disposition hearings take place in a county in which an element of the alleged offense occurred, the case and copies of all legal and social documents pertaining thereto may in the discretion of the court be transferred to the county in which the juvenile resides for supervision and enforcement of the disposition order. The court of the receiving county has jurisdiction to modify and enforce the disposition order.

(4) The court upon motion of any party or upon its own motion may, at any time, transfer a proceeding to another juvenile court when:

(a) There is reason to believe that an impartial proceeding cannot be held in the county in which the proceeding was begun; or

(b) It appears that venue is incorrect under this section. [1981 c 299 § 6; 1979 c 155 § 59; 1977 ex.s. c 291 § 60.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.070 Complaints alleging offenses—Screening of, scope—Filing information, when—Diversion of case, when—Motion to modify community supervision—Notification of parent or guardian—Probation counselor may act for prosecutor, when. (1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the

prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1) (a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (7) of this section. If the prosecutor neither files nor diverts the case, he shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, assault in the third degree, rape in the third degree, or any other offense listed in RCW 13.40.020(1) (b) or (c); or

(b) An alleged offender is accused of a felony and has a criminal history of at least one class A or class B felony, or two class C felonies, or at least two gross misdemeanors, or at least two misdemeanors and one additional misdemeanor or gross misdemeanor, or at least one class C felony and one misdemeanor or gross misdemeanor; or

(c) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense(s) in combination with the alleged offender's criminal history do not exceed three offenses or violations and do not include any felonies: *Provided*, That if the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (7) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversionary interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile.

(9) The responsibilities of the prosecutor under subsections (1) through (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints. [1983 c 191 § 18; 1981 c 299 § 7; 1979 c 155 § 60; 1977 ex.s. c 291 § 61.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.080 Diversion agreement—Defined—Scope—Modification—Limitations on—Divertee's rights—Diversionary unit's powers and duties—Use of fines.

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversionary unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it.

(2) A diversion agreement shall be limited to:

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

(b) Restitution limited to the amount of actual loss incurred by the victim, and to an amount the juvenile has the means or potential means to pay;

(c) Attendance at up to two hours of counseling and/or up to ten hours of educational or informational sessions at a community agency: *Provided*, That the state shall not be liable for costs resulting from the diversionary unit exercising the option to permit diversion agreements to mandate attendance at up to two hours of counseling and/or up to ten hours of educational or informational sessions; and

(d) A fine, not to exceed one hundred dollars. In determining the amount of the fine, the diversion unit shall consider only the juvenile's financial resources and whether the juvenile has the means to pay the fine. The diversion unit shall not consider the financial resources of the juvenile's parents, guardian, or custodian in determining the fine to be imposed.

(3) In assessing periods of community service to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall to the extent possible involve members of the community. Such members of the community shall meet with the juvenile and advise

the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(4) A diversion agreement may not exceed a period of six months for a misdemeanor or gross misdemeanor or one year for a felony and may include a period extending beyond the eighteenth birthday of the divertee. Any restitution assessed during its term may not exceed an amount which the juvenile could be reasonably expected to pay during this period. If additional time is necessary for the juvenile to complete restitution to the victim, the time period limitations of this subsection may be extended by an additional six months.

(5) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(6) Divertees and potential divertees shall be afforded due process in all contacts with a diversionary unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

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

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

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

(8) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised

at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(6) as now or hereafter amended. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversionary unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

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

(a) The fact that a charge or charges were made;

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

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

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

(e) The facts of the alleged offense.

(10) A diversionary unit may refuse to enter into a diversion agreement with a juvenile. It shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversionary unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(11) A diversionary unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement: *Provided*, That any juvenile so handled shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(6) as now or hereafter amended. A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language: *Provided further*, That a juvenile determined to be eligible by a diversionary unit for such release shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(12) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(13) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community service. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(14) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section. [1985 c 73 § 2; 1983 c 191 § 16; 1981 c 299 § 8; 1979 c 155 § 61; 1977 ex.s. c 291 § 62.]

Effective date—1985 c 73: See note following RCW 13.40.030.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.090 Prosecuting attorney as party to juvenile court proceedings—Exception, procedure. The county prosecuting attorney shall be a party to all juvenile court proceedings involving juvenile offenders or alleged juvenile offenders.

The prosecuting attorney may, after giving appropriate notice to the juvenile court, decline to represent the state of Washington in juvenile court matters except felonies unless requested by the court on an individual basis to represent the state at an adjudicatory hearing in which case he or she shall participate. When the prosecutor declines to represent the state, then such function may be performed by the juvenile court probation counselor authorized by the court or local court rule to serve as the prosecuting authority.

If the prosecuting attorney elects not to participate, the prosecuting attorney shall file with the county clerk each year by the first Monday in July notice of intent not to participate. In a county wherein the prosecuting attorney has elected not to participate in juvenile court, he or she shall not thereafter until the next filing date participate in juvenile court proceedings unless so requested by the court on an individual basis, in which case the prosecuting attorney shall participate. [1977 ex.s. c 291 § 63.]

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.100 Summons or other notification issued upon filing of information—Procedure—Order to take juvenile into custody—Contempt of court, when. (1)

Upon the filing of an information the alleged offender shall be notified by summons, warrant, or other method approved by the court of the next required court appearance.

(2) If notice is by summons, the clerk of the court shall issue a summons directed to the juvenile, if the juvenile 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. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons.

(3) A copy of the information shall be attached to each summons.

(4) The summons shall advise the parties of the right to counsel.

(5) The judge may endorse upon the summons an order directing the parents, guardian, or custodian having the custody or control of the juvenile to bring the juvenile 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 juvenile needs to be taken into custody pursuant to RCW 13.34.050, as now or hereafter amended, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the juvenile into custody and take the juvenile to the place of detention or shelter designated by the court.

(7) Service of summons may be made under the direction of the court by any law enforcement officer or probation counselor.

(8) If the person summoned as herein provided fails without reasonable cause to appear and abide the order of the court, the person may be proceeded against as for contempt of court. [1979 c 155 § 62; 1977 ex.s. c 291 § 64.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.110 Hearing on question of declining jurisdiction—Held, when—Findings. (1) The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction. Unless waived by the court, the parties, and their counsel, a decline hearing shall be held where:

(a) The respondent is sixteen or seventeen years of age and the information alleges a class A felony or an attempt to commit a class A felony; or

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, kidnaping in the second degree, rape in the second degree, or robbery in the second degree.

(2) The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public. The court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.

(3) When the respondent is transferred for criminal prosecution or retained for prosecution in juvenile court, the court shall set forth in writing its finding which shall be supported by relevant facts and opinions produced at the hearing. [1979 c 155 § 63; 1977 ex.s. c 291 § 65.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.120 Hearings—Time and place. All hearings may be conducted at any time or place within the limits of the judicial district, and such cases may not be heard in conjunction with other business of any other division of the superior court. [1981 c 299 § 9; 1979 c 155 § 64; 1977 ex.s. c 291 § 66.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.130 Procedure upon plea of guilty or not guilty to information allegations—Adjudicatory and disposition hearing—Disposition standards used in sentencing.

(1) The respondent shall be advised of the allegations in the information and shall be required to plead guilty or not guilty to the allegation(s). The state or the respondent may make preliminary motions up to the time of the plea.

(2) If the respondent pleads guilty, the court may proceed with disposition or may continue the case for a dispositional hearing. If the respondent denies guilt, an adjudicatory hearing date shall be set.

(3) At the adjudicatory hearing it shall be the burden of the prosecution to prove the allegations of the information beyond a reasonable doubt.

(4) The court shall record its findings of fact and shall enter its decision upon the record. Such findings shall set forth the evidence relied upon by the court in reaching its decision.

(5) If the respondent is found not guilty he or she shall be released from detention.

(6) If the respondent is found guilty the court may immediately proceed to disposition or may continue the case for a dispositional hearing. Notice of the time and place of the continued hearing may be given in open court. If notice is not given in open court to a party, the party shall be notified by mail of the time and place of the continued hearing.

(7) The court following an adjudicatory hearing may request that a predisposition study be prepared to aid the court in its evaluation of the matters relevant to disposition of the case.

(8) The disposition hearing shall be held within fourteen days after the adjudicatory hearing or plea of guilty

unless good cause is shown for further delay, or within twenty-one days if the juvenile is not held in a detention facility, unless good cause is shown for further delay.

(9) In sentencing an offender, the court shall use the disposition standards in effect on the date of the offense. [1981 c 299 § 10; 1979 c 155 § 65; 1977 ex.s. c 291 § 67.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.140 Juveniles entitled to usual judicial rights—Notice of—Open court—Privilege against self-incrimination—Waiver of rights, when. (1) A juvenile shall be advised of his or her rights when appearing before the court.

(2) A juvenile and his or her parent, guardian, or custodian shall be advised by the court or its representative that the juvenile has a right to be represented by counsel at all critical stages of the proceedings. Unless waived, counsel shall be provided to a juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family, in any proceeding where the juvenile may be subject to transfer for criminal prosecution, or in any proceeding where the juvenile may be in danger of confinement. The ability to pay part of the cost of counsel does not preclude assignment. In no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay therefor. The juvenile shall be fully advised of his or her right to an attorney and of the relevant services an attorney can provide.

(3) The right to counsel includes the right to the appointment of experts necessary, and the experts shall be required pursuant to the procedures and requirements established by the supreme court.

(4) Upon application of a party, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing, or such subpoenas may be issued by an attorney of record.

(5) All proceedings shall be transcribed verbatim by means which will provide an accurate record.

(6) The general public and press shall be permitted to attend any hearing unless the court, for good cause, orders a particular hearing to be closed. The presumption shall be that all such hearings will be open.

(7) In all adjudicatory proceedings before the court, all parties shall have the right to adequate notice, discovery as provided in criminal cases, opportunity to be heard, confrontation of witnesses except in such cases as this chapter expressly permits the use of hearsay testimony, findings based solely upon the evidence adduced at the hearing, and an unbiased fact-finder.

(8) A juvenile shall be accorded the same privilege against self-incrimination as an adult. An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding may not be received in evidence

at an adjudicatory hearing over objection. Evidence illegally seized or obtained may not be received in evidence over objection at an adjudicatory hearing to prove the allegations against the juvenile if the evidence would be inadmissible in an adult criminal proceeding. An extrajudicial admission or confession made by the juvenile out of court is insufficient to support a finding that the juvenile committed the acts alleged in the information unless evidence of a corpus delicti is first independently established in the same manner as required in an adult criminal proceeding.

(9) Waiver of any right which a juvenile has under this chapter must be an express waiver intelligently made by the juvenile after the juvenile has been fully informed of the right being waived.

(10) Whenever this chapter refers to waiver or objection by a juvenile, the word juvenile shall be construed to refer to a juvenile who is at least twelve years of age. If a juvenile is under twelve years of age, the juvenile's parent, guardian, or custodian shall give any waiver or offer any objection contemplated by this chapter. [1981 c 299 § 11; 1979 c 155 § 66; 1977 ex.s. c 291 § 68.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.145 Payment of fees for legal services by publicly funded counsel—Hearing—Order or decree—Entering and enforcing judgments. Upon disposition or at the time of a modification the court may order the juvenile or a parent or another person legally obligated to support the juvenile to appear, and the court may inquire into the ability of those persons to pay a reasonable sum representing in whole or in part the fees for legal services provided by publicly funded counsel.

If, after hearing, the court finds the juvenile, parent, or other legally obligated person able to pay part or all of the attorney's fees, the court may enter such order or decree as is equitable and may enforce the order or decree by execution, or in any way in which a court of equity may enforce its decrees.

In no event may the court order an amount to be paid for attorneys' fees that exceeds the average per case fee allocation for juvenile proceedings in the county where the services have been provided.

In any case in which there is no compliance with an order or decree of the court requiring a juvenile, parent, or other person legally obligated to support the juvenile to pay for legal services provided by publicly funded counsel, the court may, upon such person or persons being properly summoned or voluntarily appearing, proceed to inquire into the amount due upon the order or decree and enter judgment for that amount against the defaulting party or parties. Judgment shall be docketed in the same manner as are other judgments for the payment of money.

The county in which such judgments are entered shall be denominated the judgment creditor, and the judgments may be enforced by the prosecuting attorney of

that county. Any moneys recovered thereon shall be paid into the registry of the court and shall be disbursed to such person, persons, agency, or governmental entity as the court finds entitled thereto.

Such judgments shall remain valid and enforceable for a period of ten years subsequent to entry. [1984 c 86 § 1.]

13.40.150 Disposition hearing—Scope—Factors to be considered prior to entry of dispositional order. (1) In disposition hearings all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible in a hearing on the information. The youth or the youth's counsel and the prosecuting attorney shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when such individuals are reasonably available, but sources of confidential information need not be disclosed. The prosecutor and counsel for the juvenile may submit recommendations for disposition.

(2) For purposes of disposition:

(a) Violations which are current offenses count as misdemeanors;

(b) Violations may not count as part of the offender's criminal history;

(c) In no event may a disposition for a violation include confinement.

(3) Before entering a dispositional order as to a respondent found to have committed an offense, the court shall hold a disposition hearing, at which the court shall:

(a) Consider the facts supporting the allegations of criminal conduct by the respondent;

(b) Consider information and arguments offered by parties and their counsel;

(c) Consider any predisposition reports;

(d) Afford the respondent and the respondent's parent, guardian, or custodian an opportunity to speak in the respondent's behalf;

(e) Allow the victim or a representative of the victim and an investigative law enforcement officer to speak;

(f) Determine the amount of restitution owing to the victim, if any;

(g) Determine whether the respondent is a serious offender, a middle offender, or a minor or first offender;

(h) Consider whether or not any of the following mitigating factors exist:

(i) The respondent's conduct neither caused nor threatened serious bodily injury or the respondent did not contemplate that his or her conduct would cause or threaten serious bodily injury;

(ii) The respondent acted under strong and immediate provocation;

(iii) The respondent was suffering from a mental or physical condition that significantly reduced his or her culpability for the offense though failing to establish a defense;

(iv) Prior to his or her detection, the respondent compensated or made a good faith attempt to compensate the victim for the injury or loss sustained; and

(v) There has been at least one year between the respondent's current offense and any prior criminal offense;

(i) Consider whether or not any of the following aggravating factors exist:

(i) In the commission of the offense, or in flight therefrom, the respondent inflicted or attempted to inflict serious bodily injury to another;

(ii) The offense was committed in an especially heinous, cruel, or depraved manner;

(iii) The victim or victims were particularly vulnerable;

(iv) The respondent has a recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement;

(v) The respondent was the leader of a criminal enterprise involving several persons; and

(vi) There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history.

(4) The following factors may not be considered in determining the punishment to be imposed:

(a) The sex of the respondent;

(b) The race or color of the respondent or the respondent's family;

(c) The creed or religion of the respondent or the respondent's family;

(d) The economic or social class of the respondent or the respondent's family; and

(e) Factors indicating that the respondent may be or is a dependent child within the meaning of this chapter.

(5) A court may not commit a juvenile to a state institution solely because of the lack of facilities, including treatment facilities, existing in the community. [1981 c 299 § 12; 1979 c 155 § 67; 1977 ex.s. c 291 § 69.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range, when—Right of appeal, when. (1) When the respondent is found to be a serious offender, the court shall commit the offender to the department for the standard range of disposition for the offense.

If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall

sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230 as now or hereafter amended.

(2) Where the respondent is found to be a minor or first offender, the court shall order that the respondent serve a term of community supervision. If the court determines that a disposition of community supervision would effectuate a manifest injustice the court may impose another disposition. A disposition other than a community supervision may be imposed only after the court enters reasons upon which it bases its conclusions that imposition of community supervision would effectuate a manifest injustice. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

Any disposition other than community supervision may be appealed as provided in RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition of community supervision may not be appealed under RCW 13.40.230 as now or hereafter amended.

(3) Where a respondent is found to have committed an offense for which the respondent declined to enter into a diversion agreement, the court shall impose a term of community supervision limited to the conditions allowed in a diversion agreement as provided in RCW 13.40.080(2) as now or hereafter amended.

(4) If a respondent is found to be a middle offender:

(a) The court shall impose a determinate disposition within the standard range(s) for such offense: *Provided*, That if the standard range includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement; or

(b) The court shall impose a determinate disposition of community supervision and/or up to thirty days confinement in which case, if confinement has been imposed, the court shall state either aggravating or mitigating factors as set forth in RCW 13.40.150 as now or hereafter amended.

(c) Only if the court concludes, and enters reasons for its conclusions, that disposition as provided in subsection (4) (a) or (b) of this section would effectuate a manifest injustice, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(5), as now or hereafter amended, shall be used to determine the range. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

(d) A disposition pursuant to subsection (4)(c) of this section is appealable under RCW 13.40.230, as now or hereafter amended, by the state or the respondent. A disposition pursuant to subsection (4) (a) or (b) of this

section is not appealable under RCW 13.40.230 as now or hereafter amended.

(5) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(6) In its dispositional order, the court shall not suspend or defer the imposition or the execution of the disposition.

(7) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense. [1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.180 Disposition order—Consecutive terms when two or more offenses—Limitations. Where a disposition is imposed on a youth for two or more offenses, the terms shall run consecutively, subject to the following limitations:

(1) Where the offenses were committed through a single act or omission, omission, or through an act or omission which in itself constituted one of the offenses and also was an element of the other, the aggregate of all the terms shall not exceed one hundred fifty percent of the term imposed for the most serious offense;

(2) The aggregate of all consecutive terms shall not exceed three hundred percent of the term imposed for the most serious offense; and

(3) The aggregate of all consecutive terms of community supervision shall not exceed two years in length, or require payment of more than two hundred dollars in fines or the performance of more than two hundred hours of community service. [1981 c 299 § 14; 1977 ex.s. c 291 § 72.]

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.185 Disposition order—Confinement under departmental supervision or in juvenile facility, when. Any term of confinement imposed for an offense which exceeds thirty days shall be served under the supervision of the department. If the period of confinement imposed for more than one offense exceeds thirty days but the term imposed for each offense is less than thirty days, the confinement may, in the discretion of the court, be served in a juvenile facility operated by or pursuant to a contract with the state or a county. [1981 c 299 § 15.]

13.40.190 Disposition order—Restitution for loss—Waiver or modification of restitution. (1) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads

guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. The court may determine the amount, terms, and conditions of the restitution. Restitution may include the costs of counseling reasonably related to the offense. If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. The court may not require the respondent to pay full or partial restitution if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay such restitution. In cases where an offender has been committed to the department for a period of confinement exceeding fifteen weeks, restitution may be waived.

(2) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(3) A respondent under obligation to pay restitution may petition the court for modification of the restitution order. [1987 c 281 § 5; 1985 c 257 § 2; 1983 c 191 § 9; 1979 c 155 § 69; 1977 ex.s. c 291 § 73.]

Effective date—1987 c 281: See note following RCW 7.68.020.

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.200 Violation of order of restitution, community supervision, fines, penalty assessments, or confinement—Modification of order after hearing—Scope—Rights—Use of fines. (1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a wilful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform community service hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community service.

(3) (a) If the court finds that a respondent has willfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

(b) If the violation of the terms of the order under (a) of this subsection is failure to pay fines, penalty assessments, complete community service, or make restitution, the term of confinement imposed under (a) of this subsection shall be assessed at a rate of one day of confinement for each twenty-five dollars or eight hours owed.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community service. The number of hours of community service in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section. [1986 c 288 § 5; 1983 c 191 § 15; 1979 c 155 § 70; 1977 ex.s. c 291 § 74.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Effective dates—**Severability**—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.205 Release from physical custody, when—Authorized leaves—Leave plan and order—Notice.

(1) A juvenile sentenced to a term of confinement to be served under the supervision of the department shall not be released from the physical custody of the department prior to the release date established under RCW 13.40.210 except as otherwise provided in this section.

(2) A juvenile serving a term of confinement under the supervision of the department may be released on authorized leave from the physical custody of the department only if consistent with public safety and if:

(a) Sixty percent of the minimum term of confinement has been served; and

(b) The purpose of the leave is to enable the juvenile:

(i) To visit the juvenile's family for the purpose of strengthening or preserving family relationships;

(ii) To make plans for parole or release which require the juvenile's personal appearance in the community and which will facilitate the juvenile's reintegration into the community; or

(iii) To make plans for a residential placement out of the juvenile's home which requires the juvenile's personal appearance in the community.

(3) No authorized leave may exceed seven consecutive days. The total of all pre–minimum term authorized leaves granted to a juvenile prior to final discharge from confinement shall not exceed thirty days.

(4) Prior to authorizing a leave, the secretary shall require a written leave plan, which shall detail the purpose of the leave and how it is to be achieved, the address at which the juvenile shall reside, the identity of the person responsible for supervising the juvenile during the leave, and a statement by such person acknowledging familiarity with the leave plan and agreeing to supervise the juvenile and to notify the secretary immediately if the juvenile violates any terms or conditions of the leave. The leave plan shall include such terms and conditions as the secretary deems appropriate and shall be signed by the juvenile.

(5) Upon authorizing a leave, the secretary shall issue to the juvenile an authorized leave order which shall contain the name of the juvenile, the fact that the juvenile is on leave from a designated facility, the time period of the leave, and the identity of an appropriate official of the department to contact when necessary. The authorized leave order shall be carried by the juvenile at all times while on leave.

(6) Prior to the commencement of any authorized leave, the secretary shall give notice of the leave to the appropriate law enforcement agency in the jurisdiction in which the juvenile will reside during the leave period. The notice shall include the identity of the juvenile, the time period of the leave, the residence of the juvenile during the leave, and the identity of the person responsible for supervising the juvenile during the leave.

(7) The secretary may authorize a leave, which shall not exceed forty-eight hours plus travel time, to meet an emergency situation such as a death or critical illness of a member of the juvenile's family. The secretary may authorize a leave, which shall not exceed the period of time medically necessary, to obtain medical care not available in a juvenile facility maintained by the department. In cases of emergency or medical leave the secretary may waive all or any portions of subsections (2)(a), (3), (4), (5), and (6) of this section.

(8) If requested by the juvenile's victim or the victim's immediate family prior to confinement, the secretary shall give notice of any leave to the victim or the victim's immediate family.

(9) A juvenile who violates any condition of an authorized leave plan may be taken into custody and returned to the department in the same manner as an adult in identical circumstances.

(10) Notwithstanding the provisions of this section, a juvenile placed in minimum security status may participate in work, educational, community service, or treatment programs in the community up to twelve hours a day if approved by the secretary. Such a release shall not be deemed a leave of absence. [1983 c 191 § 10.]

13.40.210 Setting of release or discharge date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Parole officer's right of arrest. (1) The secretary shall, except in the case of a juvenile committed by a court to a term of confinement in a state institution outside the appropriate standard range for the offense(s) for which the juvenile was found to be guilty established pursuant to RCW 13.40.030, as now or hereafter amended, set a release or discharge date for each juvenile committed to its custody which shall be within the prescribed range to which a juvenile has been committed. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter: *Provided*, That days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the end of each calendar year if any such early releases have occurred during that year as a result of excessive in-residence population. In no event shall a serious offender, as defined in RCW 13.40.020(1) be granted release under the provisions of this subsection.

(3) Following the juvenile's release pursuant to subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months. Such a parole program shall be mandatory for offenders released under subsection (2) of this section. The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further

this goal may require the juvenile to: (a) Undergo available medical or psychiatric treatment; (b) report as directed to a parole officer; (c) pursue a course of study or vocational training; (d) remain within prescribed geographical boundaries and notify the department of any change in his or her address; and (e) refrain from committing new offenses. After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (a) Continued supervision under the same conditions previously imposed; (b) intensified supervision with increased reporting requirements; (c) additional conditions of supervision authorized by this chapter; and (d) imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest such person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section. [1987 c 505 § 4; 1985 c 287 § 1; 1985 c 257 § 4; 1983 c 191 § 11; 1979 c 155 § 71; 1977 ex.s. c 291 § 75.]

Intent—1985 c 257 § 4: "To promote both public safety and the welfare of juvenile offenders, it is the intent of the legislature that services to juvenile offenders be delivered in the most effective and efficient means possible. Section 4 of this act facilitates those objectives by permitting counties to supervise parole of juvenile offenders. This is consistent with the philosophy of chapter 13.06 RCW to deliver community services to juvenile offenders comprehensively at the county level." [1985 c 257 § 3.] Section 4 of this act consists of the 1985 c 257 amendment to RCW 13.40.210.

Severability—1985 c 257: See note following RCW 13.34.165.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.40.220 Costs of support, treatment and confinement, order for—Contempt of court, when. Whenever legal custody of a child is vested in someone other than his or her parents, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum representing in whole or in part the costs of support, treatment, and confinement of the child after

the decree is entered. If the parent or other legally obligated person wilfully fails or refuses to pay such sum, the court may proceed against such person for contempt. [1977 ex.s. c 291 § 76.]

~~Effective dates—Severability—1977 ex.s. c 291:~~ See notes following RCW 13.04.005.

13.40.230 Appeal from order of disposition—Jurisdiction—Procedure—Scope—Release pending appeal. (1) Dispositions reviewed pursuant to RCW 13.40.160, as now or hereafter amended, shall be reviewed in the appropriate division of the court of appeals.

An appeal under this section shall be heard solely upon the record that was before the disposition court. No written briefs may be required, and the appeal shall be heard within thirty days following the date of sentencing and a decision rendered within fifteen days following the argument. The supreme court shall promulgate any necessary rules to effectuate the purposes of this section.

(2) To uphold a disposition outside the standard range, or which imposes confinement for a minor or first offender, the court of appeals must find (a) that the reasons supplied by the disposition judge are supported by the record which was before the judge and that those reasons clearly and convincingly support the conclusion that a disposition within the range, or nonconfinement for a minor or first offender, would constitute a manifest injustice, and (b) that the sentence imposed was neither clearly excessive nor clearly too lenient.

(3) If the court does not find subsection (2)(a) of this section it shall remand the case for disposition within the standard range or for community supervision without confinement as would otherwise be appropriate pursuant to this chapter.

(4) If the court finds subsection (2)(a) but not subsection (2)(b) of this section it shall remand the case with instructions for further proceedings consistent with the provisions of this chapter.

(5) Pending appeal, a respondent may not be committed or detained for a period of time in excess of the standard range for the offense(s) committed or sixty days, whichever is longer. The disposition court may impose conditions on release pending appeal as provided in RCW 13.40.040(4) and 13.40.050(6). Upon the expiration of the period of commitment or detention specified in this subsection, the court may also impose such conditions on the respondent's release pending disposition of the appeal.

(6) Appeal of a disposition under this section does not affect the finality or appeal of the underlying adjudication of guilt. [1981 c 299 § 16; 1979 c 155 § 72; 1977 ex.s. c 291 § 77.]

~~Effective date—Severability—1979 c 155:~~ See notes following RCW 13.04.011.

~~Effective dates—Severability—1977 ex.s. c 291:~~ See notes following RCW 13.04.005.

13.40.240 Construction of RCW references to juvenile delinquents or juvenile delinquency. All references to juvenile delinquents or juvenile delinquency in other

chapters of the Revised Code of Washington shall be construed as meaning juvenile offenders or the commitment of an offense by juveniles as defined by this chapter. [1977 ex.s. c 291 § 78.]

~~Effective dates—Severability—1977 ex.s. c 291:~~ See notes following RCW 13.04.005.

13.40.250 Traffic infraction cases. A traffic infraction case involving a juvenile under the age of sixteen may be diverted in accordance with the provisions of this chapter or filed in juvenile court.

(1) If a notice of traffic infraction is filed in juvenile court, the juvenile named in the notice shall be afforded the same due process afforded to adult defendants in traffic infraction cases.

(2) A monetary penalty imposed upon a juvenile under the age of sixteen who is found to have committed a traffic infraction may not exceed one hundred dollars. At the juvenile's request, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the prevailing state minimum wage per hour.

(3) A diversion agreement entered into by a juvenile referred pursuant to this section shall be limited to thirty hours of community service, or educational or informational sessions.

(4) If a case involving the commission of a traffic infraction or offense by a juvenile under the age of sixteen has been referred to a diversion unit, an abstract of the action taken by the diversion unit may be forwarded to the department of licensing in the manner provided for in RCW 46.20.270(2). [1980 c 128 § 16.]

~~Effective date—Severability—1980 c 128:~~ See notes following RCW 46.63.060.

13.40.280 Transfer of juvenile to department of corrections—Hearing—Term—Transfer to a facility for juveniles. (1) Notwithstanding the provisions of *RCW 13.04.115, the secretary, with the consent of the secretary of the department of corrections, has the authority to transfer a juvenile presently or hereafter committed to the department of social and health services to the department of corrections for appropriate institutional placement in accordance with this section.

(2) The secretary of the department of social and health services may, with the consent of the secretary of the department of corrections, transfer a juvenile offender to the department of corrections if it is established at a hearing before a review board that continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution. The department of social and health services shall establish rules for the conduct of the hearing, including provision of counsel for the juvenile offender.

(3) A juvenile offender transferred to an institution operated by the department of corrections shall not remain in such an institution beyond the maximum term of confinement imposed by the juvenile court.

(4) A juvenile offender who has been transferred to the department of corrections under this section may, in

the discretion of the secretary of the department of social and health services and with the consent of the secretary of the department of corrections, be transferred from an institution operated by the department of corrections to a facility for juvenile offenders deemed appropriate by the secretary. [1983 c 191 § 22.]

*Reviser's note: RCW 13.04.115 was repealed by 1985 c 50 § 2.

13.40.285 Juvenile offender sentenced to terms in juvenile and adult facilities—Transfer to department of corrections—Term of confinement. A juvenile offender ordered to serve a term of confinement with the department of social and health services who is subsequently sentenced to the department of corrections may, with the consent of the department of corrections, be transferred by the secretary of social and health services to the department of corrections to serve the balance of the term of confinement ordered by the juvenile court. The juvenile and adult sentences shall be served consecutively. In no case shall the secretary credit time served as a result of an adult conviction against the term of confinement ordered by the juvenile court. [1983 c 191 § 23.]

13.40.300 Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday. (1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition; or

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday.

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been

committed by a person eighteen years of age or older. [1986 c 288 § 6; 1983 c 191 § 17; 1981 c 299 § 17; 1979 c 155 § 73; 1975 1st ex.s. c 170 § 1. Formerly RCW 13.04.260.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.40.400 Applicability of RCW 10.01.040 to chapter. The provisions of RCW 10.01.040 apply to chapter 13.40 RCW. [1979 c 155 § 74.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.40.440 Chapter 9.92 RCW not to affect dispositions under juvenile justice act. See RCW 9.92.200.

13.40.450 Chapters 13.04 and 13.40 RCW as exclusive authority for adjudication and disposition of juvenile offenders. See RCW 13.04.450.

Chapter 13.50

KEEPING AND RELEASE OF RECORDS BY JUVENILE JUSTICE OR CARE AGENCIES

Sections	
13.50.010	Definitions—Conditions when filing petition or information—Duties pursuant to maintenance of accurate records and access thereto.
13.50.050	Records relating to commission of juvenile offenses—Maintenance of and access thereto or the destroying thereof.
13.50.100	Records not relating to commission of juvenile offenses—Maintenance of and access thereto.
13.50.150	Confidential records—Expungement to protect due process rights.
13.50.200	Records of motor vehicle operation violation forwarded.
13.50.250	Records chapter applicable to.

13.50.010 Definitions—Conditions when filing petition or information—Duties pursuant to maintenance of accurate records and access thereto. (1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the department of social and health services and its contracting agencies, and persons or public or private agencies having children committed to their custody;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Social file" means the juvenile court file containing the records and reports of the probation counselor;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number.

The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information;

(b) An agency shall take reasonable steps to insure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment, or to individuals or agencies engaged in legitimate research for educational, scientific, or public purposes. The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050(11). Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the juvenile disposition standards commission under RCW 13.40.025 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission. [1986 c 288 § 11; 1979 c 155 § 8.]

Severability—1986 c 288: See note following RCW 13.32A.050.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.050 Records relating to commission of juvenile offenses—Maintenance of and access thereto or the destroying thereof. (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 (11) 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 and RCW 13.50.010.

(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) 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) The juvenile court and the prosecutor may set up and maintain a central record-keeping 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 record-keeping 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 record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(8) 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.

(9) 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.

(10) 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 (24) 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.

(11) The court shall grant the motion to seal records made pursuant to subsection (10) of this section if it finds that:

(a) Two years have elapsed from the later of: (i) Final discharge of the person from the supervision of any agency charged with supervising juvenile offenders; or (ii) from the entry of a court order relating to the commission of a juvenile offense or a criminal offense;

(b) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense; and

(c) No proceeding is pending seeking the formation of a diversion agreement with that person.

(12) The person making a motion pursuant to subsection (10) 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.

(13) If the court grants the motion to seal made pursuant to subsection (10) of this section, it shall, subject to subsection (24) 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.

(14) 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 (24) of this section.

(15) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any conviction for any adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW for any juvenile adjudication of guilt for a class A offense.

(16) 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 who is 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 (24) of this section, order the destruction of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(17) The court may grant the motion to destroy records made pursuant to subsection (16) of this section if it finds:

(a) The person making the motion is at least twenty-three years of age;

(b) The person has not subsequently been convicted of a felony;

(c) No proceeding is pending against that person seeking the conviction of a criminal offense; and

(d) The person has never been found guilty of a serious offense.

(18) A person eighteen years of age or older whose criminal history consists of only one referral for diversion may request that the court order the records in that case destroyed. The request shall be granted, subject to subsection (24) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.

(19) If the court grants the motion to destroy records made pursuant to subsection (16) or (18) of this section, it shall, subject to subsection (24) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(20) The person making the motion pursuant to subsection (16) or (18) 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.

(21) 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.

(22) 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.

(23) Any juvenile justice or care agency may, subject to the limitations in subsection (24) of this section and subparagraphs (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 is eighteen years of age or older and his or her criminal history consists entirely of one diversion agreement and two years have passed since completion of the agreement.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(24) 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, palm-prints, 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. [1987 c 450 § 8; 1986 c 257 § 33; 1984 c 43 § 1; 1983 c 191 § 19; 1981 c 299 § 19; 1979 c 155 § 9.]

Rules of court: *Superior Court Criminal Rules (CrR), generally. Discovery: CrR 4.7.*

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—1986 c 257 §§ 17–35: See note following RCW 9.94A.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.100 Records not relating to commission of juvenile offenses—Maintenance of and access thereto.

(1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) 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 of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the state-wide juvenile court information system.

(4) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: *Provided*, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile.

(5) A juvenile or his or her parent denied access to any records following an agency determination under subsection (4) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsections (4) (a) and (b) of this section.

(6) The person making a motion under subsection (5) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(7) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (4) of this section.

(8) Information concerning a juvenile or a juvenile's family contained in records covered by this section may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family. [1983 c 191 § 20; 1979 c 155 § 10.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

13.50.150 Confidential records—Expungement to protect due process rights.

Nothing in this chapter shall be construed to prevent the expungement of any juvenile record ordered expunged by a court to preserve the due process rights of its subject. [1977 ex.s. c 291 § 13. Formerly RCW 13.04.276, see 1979 c 155 § 12.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective date—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.50.200 Records of motor vehicle operation violation forwarded.

Notwithstanding any other provision of this chapter, whenever a child is arrested for a violation of any law, including municipal ordinances, regulating the operation of vehicles on the public highways, a copy of the traffic citation and a record of the action taken by the court shall be forwarded by the juvenile court to the department of licensing in the same manner as provided in RCW 46.20.270. [1979 c 155 § 13; 1977 ex.s. c 291 § 14. Formerly RCW 13.04.278.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective date—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

13.50.250 Records chapter applicable to.

This chapter applies to all juvenile justice or care agency records created on or after July 1, 1978. [1979 c 155 § 11.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Chapter 13.60

MISSING CHILDREN CLEARINGHOUSE

Sections

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| 13.60.010 | Missing children clearinghouse—Hotline—Distribution of information. |
| 13.60.020 | Entry of information on missing children into missing person computer network—Access. |

13.60.030 Information and education regarding missing children—Plan.

13.60.010 Missing children clearinghouse—Hotline—Distribution of information. The Washington state patrol shall establish a missing children clearinghouse which shall include the maintenance and operation of a toll-free, twenty-four-hour telephone hotline. The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of social and health services, and the general public regarding missing children. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children. The state patrol shall also maintain a regularly updated computerized link with national and other state-wide missing person systems or clearinghouses.

"Child" or "children," as used in this chapter, means an individual under eighteen years of age. [1985 c 443 § 22.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

13.60.020 Entry of information on missing children into missing person computer network—Access. Local law enforcement agencies shall file an official missing person report and enter biographical information into the state missing person computerized network within twelve hours after notification of a missing child is received under RCW 13.32A.050 (1), (3), or (4). The patrol shall collect such information as will enable it to retrieve immediately the following information about a missing child: Name, date of birth, social security number, fingerprint classification, relevant physical descriptions, and known associates and locations. Access to the preceding information shall be available to appropriate law enforcement agencies, and to parents and legal guardians, when appropriate. [1985 c 443 § 23.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

13.60.030 Information and education regarding missing children—Plan. The superintendent of public instruction shall meet semiannually with the Washington state patrol to develop a coordinated plan for the distribution of information and education of teachers and students in the school districts of the state regarding the missing children problem in the state. The superintendent of public instruction shall encourage local school districts to cooperate by providing the state patrol information on any missing children that may be identified within the district. [1985 c 443 § 24.]

Severability—Effective date—1985 c 443: See notes following RCW 7.69.010.

Title 14

AERONAUTICS

Chapters

- 14.07** Municipal airports—1941 act.
- 14.08** Municipal airports—1945 act.
- 14.12** Airport zoning.
- 14.16** Aircraft and airman regulations.
- 14.20** Aircraft dealers.
- 14.30** Western regional short haul air transportation compact.

Aeronautics, department of transportation, division of: Chapter 47.68 RCW.

Aircraft excise tax: Chapter 82.48 RCW.

Assessment of air transportation companies for property tax purposes: Chapter 84.12 RCW.

Lease of county property for airport purposes: RCW 36.34.180.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Chapter 14.07

MUNICIPAL AIRPORTS—1941 ACT

Sections

- 14.07.010 General powers—Municipal purpose and public use.
- 14.07.020 Acquisition of property—Eminent domain—Exemption.
- 14.07.030 Appropriation of money or conveyance of property to other municipalities.
- 14.07.040 Acts ratified and confirmed—Chapter cumulative.

Lease of property for airport purposes

county property: RCW 36.34.180.

port district property: RCW 53.08.080.

Municipal airports—1945 act: Chapter 14.08 RCW.

14.07.010 General powers—Municipal purpose and public use. Any city, town, port district or county is hereby authorized and empowered by and through their appropriate corporate authorities to acquire, maintain and operate, within or without the boundaries of the counties in which such city, town or port district is situated, sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes, and seaplanes for the aerial transportation of persons, property and mail or for use of military and naval aircraft, either jointly with another city, town, port district, county, the state of Washington, or the United States of America or severally, and the same is hereby declared to be a municipal purpose and a public use. [1941 c 21 § 1; Rem. Supp. 1941 § 2722–8. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

14.07.020 Acquisition of property—Eminent domain—Exemption. Such municipalities may also acquire by purchase, condemnation or lease, lands and

other property for said purpose and dispose of such lands and other property, including property acquired by tax foreclosure proceedings, by sale or gift for public use to any city, town, port district, county, the state of Washington or the United States of America. Any city, town, port district and county is hereby empowered to acquire lands and other property for said purpose by the exercise of the power of eminent domain under the procedure that is or shall be provided by law for the condemnation and appropriation of private property for any of their respective corporate uses, and no property shall be exempt from such condemnation, appropriation or disposition by reason of the same having been or being dedicated, appropriated, or otherwise held to public use: *Provided, however,* That nothing in this chapter shall authorize or entitle any city, town, port district or county to acquire by eminent domain any site or other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes for aerial transportation of persons, property, mail or military or naval aircraft, now or hereafter owned by any other city, town, port district or county. [1941 c 21 § 2; Rem. Supp. 1941 § 2722–9. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

14.07.030 Appropriation of money or conveyance of property to other municipalities. Any city, town, port district or county is authorized and empowered by and through their corporate authorities to appropriate sums of money and pay the same to any other city, town, port district or county, or deed and convey property already owned to such city, town, port district or county, for use in acquiring and maintaining sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes and seaplanes for the aerial transportation of persons, property, mail or military and naval aircraft and need not require consideration other than the benefit which may be derived by the city, town, port district or county on account of the use therefor and development of such property for said purposes. [1941 c 21 § 3; Rem. Supp. 1941 § 2722–10.]

14.07.040 Acts ratified and confirmed—Chapter cumulative. All acts of any such municipality in the exercise or attempted exercise of any powers herein conferred are hereby ratified and confirmed. The provisions of this chapter shall be cumulative and nothing herein contained shall abridge or limit the powers of the city, town, port district or county under existing law. [1941 c 21 § 4; Rem. Supp. 1941 § 2722–11. Prior: 1933 ex.s. c 3 § 1; 1929 c 93 § 1; 1919 c 48 § 1.]

Chapter 14.08

MUNICIPAL AIRPORTS—1945 ACT

Sections

14.08.010	Definition—"Municipality".
14.08.015	Definitions.
14.08.020	Airports a public purpose.
14.08.030	Acquisition of property and easements—Eminent domain—Encroachments prohibited.
14.08.070	Prior acquisition of airport property validated.
14.08.080	Method of defraying cost.
14.08.090	Issuance of bonds—Security.
14.08.100	Raising of funds and disposition of revenue.
14.08.112	Revenue bonds authorized—Purpose—Special fund—Redemption.
14.08.114	Issuance of funding or refunding bonds authorized.
14.08.116	Port district revenue bond financing powers not repealed or superseded.
14.08.118	Revenue warrants authorized.
14.08.120	Specific powers of municipalities operating airports.
14.08.122	Adoption of regulations by airport operator for airport rental and use and collection of charges.
14.08.160	Federal aid.
14.08.190	Establishment of airports on waters and reclaimed land.
14.08.200	Joint operations.
14.08.290	County airport districts authorized.
14.08.300	Governing body of district.
14.08.302	Board of airport district commissioners—Petition—Order establishing.
14.08.304	Board of airport district commissioners—Members—Election—Terms—Expenses.
14.08.310	Assistance to other municipalities.
14.08.330	Jurisdiction of municipality over airport and facilities exclusive—Concurrent jurisdiction over adjacent territory—Fire code enforcement by agreement.
14.08.340	Interpretation and construction.
14.08.350	Severability—1945 c 182.
14.08.360	Short title.
14.08.370	Repeal.

*Lease of property for airport purposes
county property: RCW 36.34.180.
port district property: RCW 53.08.080.*

Municipal airports—1941 act: Chapter 14.07 RCW.

14.08.010 Definition—"Municipality". (1) For the purpose of this chapter, unless herein specifically otherwise provided, the definitions of words, terms and phrases appearing in the state aeronautic department act of this state are hereby adopted.

(2) As used in this chapter, unless the context otherwise requires: "Municipality" means any county, city, town, airport district, or port district of this state; "airport purposes" means and includes airport, restricted landing area and other air navigation facility purposes. [1987 c 254 § 3; 1945 c 182 § 1; Rem. Supp. 1945 § 2722-30.]

Reviser's note: The state aeronautic department act (chapter 252, Laws of 1945) contained no definitions. It was repealed by chapter 165, Laws of 1947, codified herein as chapter 47.68 RCW.

14.08.015 Definitions. (1) "Airport charges" means charges of an airport operator for tie-downs, landing fees, the occupation of a hangar by an aircraft, and all other charges owing or to become owing under a contract between an aircraft owner and an airport operator or under an officially adopted regulation and/or tariff including, but not limited to, the cost of sale and related expenses.

(2) "Aircraft" means every species of aircraft or other mechanical device capable of being used for the purpose of aerial flight.

(3) "Airport operator" means any municipality as defined in RCW 14.08.010(2) or state agency which owns and/or operates an airport.

(4) "Owner" means (a) every natural person, firm, partnership, corporation, association, trust, estate, or organization, or agent thereof with actual or apparent authority, who expressly or impliedly contracts for use of airport property for landing, parking, or hangaring aircraft, and (b) includes the registered owner or owners and lienholders of record with the federal aviation administration. [1987 c 254 § 1.]

14.08.020 Airports a public purpose. The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public, governmental, county and municipal purposes and as a matter of public necessity. [1961 c 74 § 1; 1945 c 182 § 3; Rem. Supp. 1945 § 2722-32.]

14.08.030 Acquisition of property and easements—Eminent domain—Encroachments prohibited. (1) Every municipality is hereby authorized, through its governing body, to acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities and to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state; to make, prior to any such acquisition, investigations, surveys, and plans; to construct, install and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers; and to purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(2) Property needed by a municipality for an airport or restricted landing area, or for the enlargement of either, or for other airport purposes, may be acquired by purchase, gift, devise, lease or other means if such municipality is able to agree with the owners of said property on the terms of such acquisition, and otherwise by condemnation in the manner provided by the law under which such municipality is authorized to acquire like property for public purposes, full power to exercise the right of eminent domain for such purposes being hereby granted every municipality both within and without its territorial limits. If but one municipality is involved and the charter of such municipality prescribes a method of acquiring property by condemnation, proceedings shall be had pursuant to the provisions of such charter and may be followed as to property within or without its territorial limits. Any title to real property so acquired shall be in fee simple, absolute and unqualified in any way. The fact that the property needed has been acquired by the owner under power of eminent domain, shall not prevent its acquisition by the municipality by the exercise of the right of eminent domain herein conferred.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of this chapter, every municipality is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air spaces over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports or restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under the provisions of any law of this state.

(4) It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted or permit to grow higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to the provisions of this section. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the municipality in charge of the airport or restricted landing area for which airport protection privileges have been acquired as in this section provided may go upon the land of others and remove any such encroachment without being liable for damages in so doing. [1945 c 182 § 2; Rem. Supp. 1945

§ 2722–31. Formerly RCW 14.08.030, 14.08.040, 14.08.050, and 14.08.060.]

Reviser's note: Caption for 1945 c 182 § 2, reads as follows: "Municipalities may acquire airports."

14.08.070 Prior acquisition of airport property validated. Any acquisition of property within or without the limits of any municipality for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective. [1945 c 182 § 4; Rem. Supp. 1945 § 2722–33.]

14.08.080 Method of defraying cost. The cost of investigating, surveying, planning, acquiring, establishing, constructing, enlarging or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of this chapter may be paid for by appropriation of moneys available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine. The word "cost" includes awards in condemnation proceedings and rentals where an acquisition is by lease. [1945 c 182 § 5; Rem. Supp. 1945 § 2722–34.]

Reviser's note: Caption for 1945 c 182 § 5 reads as follows: "Purchase price and costs of improvement may be paid from appropriations or bond issues."

14.08.090 Issuance of bonds—Security. Any bonds to be issued by any municipality pursuant to the provisions of this chapter shall be authorized and issued in the manner and within the limitation prescribed by the Constitution and laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for public purposes generally, secured by the revenues of the airport, a mortgage on facilities, or a general tax levy as allowed by law, if the plan and system resolution are approved by the secretary of transportation or the division of municipal corporations. [1984 c 7 § 4; 1945 c 182 § 6; Rem. Supp. 1945 § 2722–35.]

Severability—1984 c 7: See note following RCW 47.01.141.

Levy of taxes: Chapter 84.52 RCW.

Public contracts and indebtedness: Title 39 RCW.

14.08.100 Raising of funds and disposition of revenue. (1) The governing bodies having power to appropriate moneys within the municipalities in this state for the purpose of acquiring, establishing, constructing, enlarging, improving, maintaining, equipping or operating airports and other air navigation facilities under the provisions of this chapter, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, moneys sufficient to carry out therein the provisions of this chapter.

(2) The revenues obtained from the ownership, control and operation of any such airport or other air navigation facility shall be used, first, to finance the maintenance

and operating expenses thereof, and, second, to make payments of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. Revenues in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or other air navigation facilities, and to construct, maintain, lease, and otherwise finance buildings and facilities for industrial or commercial use: *Provided*, That such portion of the airport property to be devoted to said industrial or commercial use be first found by the governing body to be not required for airport purposes. [1959 c 231 § 1; 1945 c 182 § 7; Rem. Supp. 1945 § 2722-36. Formerly RCW 14.08.100, 14.08.110.]

14.08.112 Revenue bonds authorized—Purpose—Special fund—Redemption. (1) Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control and operate an airport or other air navigation facility, are hereby authorized to issue revenue bonds to provide part or all of the funds required to accomplish the powers granted them by chapter 14.08 RCW, and to construct, acquire by purchase or condemnation, equip, add to, extend, enlarge, improve, replace and repair airports, facilities and structures thereon including but not being limited to facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and other properties incidental to the operation of airports and to pay all costs incidental thereto.

The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on the bonds of each issue, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use and operation of the airport and all airport facilities and structures thereon and used and operated in connection therewith, including but not being limited to fees charged for all uses of the airport and facilities, rentals derived from leases of part or all of the airport, buildings and any or all air navigation facilities thereon, fees derived from concessions granted, and proceeds of sales of part or all of the airport and any or all buildings and structures thereon or equipment therefor, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Revenue bonds and the interest thereon shall be payable only out of and shall be a valid claim of the owner thereof only as against the special fund and the revenue pledged to it, and shall not constitute a general indebtedness of the municipality.

Each revenue bond and any interest coupon attached thereto shall name the fund from which it is payable and state upon its face that it is only payable therefrom; however, all revenue bonds and any interest coupons issued under RCW 14.08.112 and 14.08.114 shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state. Each issue of revenue bonds may be bearer coupon bonds or may be registered either as to principal only or as to principal

and interest as provided in RCW 39.46.030; shall be in the denomination or denominations the legislative body of the municipality shall deem proper; shall be payable at the time or times and at the place or places as shall be determined by the legislative body; shall bear interest at such rate or rates as authorized by the legislative body; shall be signed on behalf of the municipality by the chairman of the county legislative authority, mayor of the city or town, president of the port commission, and similar officer of any other municipality, shall be attested by the county auditor, the clerk or comptroller of the city or town, the secretary of the port commission, and similar officer of any other municipality, one of which signatures may be a facsimile signature, and shall have the seal of the municipality impressed thereon; any interest coupons attached thereto shall be signed by the facsimile signatures of said officials. Revenue bonds shall be sold in the manner as the legislative body of the municipality shall deem best, either at public or private sale.

The municipality at the time of the issuance of revenue bonds may provide covenants as it may deem necessary to secure and guarantee the payment of the principal thereof and interest thereon, including but not being limited to covenants to create a reserve fund or account and to authorize the payment or deposit of certain moneys therein for the purpose of securing or guaranteeing the payment of the principal and interest, to establish and maintain rates, charges, fees, rentals and sales prices sufficient to pay the principal and interest and to maintain an adequate coverage over annual debt service, to appoint a trustee for the bond owners and a trustee for the safeguarding and disbursing of the proceeds of sale of the bonds and to fix the powers and duties of the trustee or trustees, and to make any and all other covenants as the legislative body may deem necessary to its best interest and that of its inhabitants to accomplish the most advantageous sale possible of the bonds. The legislative body may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with revenue bonds being issued and sold.

The legislative body of the municipality may include an amount for working capital and an amount necessary for interest during the period of construction of the airport or any facilities plus six months, in the principal amount of any revenue bond issue; if it deems it to the best interest of the municipality and its inhabitants, it may provide in any contract for the construction or acquisition of an airport or facilities that payment therefor shall be made only in revenue bonds at the par value thereof.

If the municipality or any of its officers shall fail to carry out any of its or their obligations, pledges or covenants made in the authorization, issuance and sale of bonds, the owner of any bond or the trustee may bring action against the municipality and/or said officers to compel the performance of any or all of the covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with

chapter 39.46 RCW. [1983 c 167 § 16; 1970 ex.s. c 56 § 3; 1969 ex.s. c 232 § 2; 1957 c 53 § 1.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

14.08.114 Issuance of funding or refunding bonds authorized. When any municipality has outstanding revenue bonds or warrants payable solely from revenues derived from the ownership, control, use and operation of the airport and all its facilities and structures thereon used and operated in connection therewith, the legislative body thereof may provide for the issuance of funding or refunding bonds to fund or refund outstanding warrants or bonds or any part thereof at or before maturity, and may combine various outstanding warrants and various series and issues of outstanding bonds in the amount thereof to be funded or refunded and may issue funding or refunding bonds to pay any redemption premium and interest payable on the outstanding revenue warrants or bonds being funded or refunded. The legislative body of the municipality shall create a special fund for the sole purpose of paying the principal of and interest on funding or refunding bonds, into which fund the legislative body shall obligate the municipality to pay an amount of the gross revenue derived from its ownership, control, use and operation of the airport and all airport facilities and structures thereon as provided in RCW 14.08.112, sufficient to pay the principal and interest as the same shall become due, and to maintain adequate reserves therefor if necessary. Bonds and the interest thereon shall be payable only out of and shall be a valid claim of the owner thereof only as against the special fund and the revenue pledged to it, and shall not constitute a general indebtedness of the municipality.

The net interest cost to maturity on funding or refunding bonds shall be at such rate or rates as shall be authorized by the legislative body.

The municipality may exchange funding or refunding bonds at par for the warrants or bonds which are being funded or refunded, or it may sell the funding or refunding bonds in the manner as it shall deem for the best interest of the municipality and its inhabitants, either at public or private sale. Funding or refunding bonds shall be governed by and issued under and in accordance with the provisions of RCW 14.08.112 with respect to revenue bonds unless there is a specific provision to the contrary in this section. [1983 c 167 § 17; 1970 ex.s. c 56 § 4; 1969 ex.s. c 232 § 3; 1957 c 53 § 2.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

14.08.116 Port district revenue bond financing powers not repealed or superseded. Nothing in RCW 14.08.112 and 14.08.114 shall repeal or supersede revenue bond financing powers otherwise granted to port districts

under the provisions of chapter 53.40 RCW. [1957 c 53 § 3.]

14.08.118 Revenue warrants authorized. Municipalities, including any governmental subdivision which may be hereafter authorized by law to own, control and operate an airport, or other air navigation facility, may issue revenue warrants for the same purposes for which they may issue revenue bonds, and the provisions of RCW 14.08.112 as now or hereafter amended relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such revenue warrants.

Revenue warrants so issued shall not constitute a general indebtedness of the municipality. [1971 ex.s. c 176 § 1.]

14.08.120 Specific powers of municipalities operating airports. In addition to the general powers conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce those

penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For the purposes of such management and government and direction of public use, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They shall conform to and be consistent with the laws of this state and the rules of the state department of transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction, or operation of airports or airport facilities.

(4) To lease airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities: *Provided*, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Acting through its governing body, to sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subsection (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. If there is a finding by the governing body of the

municipality that any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs, or related aeronautic purposes, then the municipal airport commission may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions that seem just and proper to the municipal airport commission. Any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years, but any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter, to be readjusted at the commencement of each such period if written request for readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: *Provided*, That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section. [1984 c 7 § 5; 1961 c 74 § 2; 1959 c 231 § 2; 1957 c 14 § 1. Prior: 1953 c 178 § 1; 1945 c 182 § 8;

Rem. Supp. 1945 § 2722–37. Formerly RCW 14.08.120 through 14.08.150 and 14.08.320.]

Severability—1984 c 7: See note following RCW 47.01.141.

Continuation of existing law—1957 c 14: "The provisions of section 1 of this act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions, nor as affecting any proceeding instituted thereunder." [1957 c 14 § 2.] This applies to RCW 14.08.120.

Validating—1957 c 14: "The provisions of section 1 of this act are retroactive and any actions or proceedings had or taken under the provisions of RCW 14.08.120 through 14.08.150 or 14.08.320 are hereby ratified, validated and confirmed." [1957 c 14 § 3.]

Appointment of police officers by port districts operating airports: RCW 53.08.280.

14.08.122 Adoption of regulations by airport operator for airport rental and use and collection of charges. An airport operator may adopt all regulations necessary for rental and use of airport facilities and for the expeditious collection of airport charges. The regulations may also establish procedures for the enforcement of these regulations by the airport operator. The regulations shall include the following:

(1) Procedures authorizing airport personnel to take reasonable measures including, but not limited to, the use of chains, ropes, and locks to secure aircraft within the airport facility so that the aircraft are in the possession and control of the airport operator and cannot be removed from the airport. These procedures may be used if an owner hangaring or parking an aircraft at the airport fails to pay the airport charges owed and the account is at least sixty days delinquent. At the time of securing the aircraft, an authorized airport employee shall attach to the aircraft a readily visible notice and shall send a copy of the notice to the owner at his or her last known address by registered mail, return receipt requested, and a copy of the notice by first class mail. 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 reasonable description of the aircraft;
- (c) The identity of the authorized employee;
- (d) The amount of airport charges owing;
- (e) A statement that if the account is not paid in full within one hundred eighty days from the time the notice was attached the aircraft may be sold at public auction to satisfy the airport charges;
- (f) The time and place of sale;
- (g) A statement of the owner's right to commence legal proceedings to contest the charges owing and to have the aircraft released upon posting of an adequate cash bond or other security; and
- (h) The address and telephone number where additional information may be obtained concerning the release of the aircraft.

(2) Procedures authorizing airport personnel at their discretion to place aircraft in an area within the airport operator's control for storage with private persons under the airport operator's control as bailees of the airport facility. Reasonable cost of any such procedure shall be paid by the aircraft's owner.

(3) If an aircraft is moved under conditions authorized under this section the owner who is obligated for hangaring or parking or other airport charges may regain possession of the aircraft by:

(a) Making arrangements satisfactory with the airport operator for the immediate removal of the aircraft from the airport's hangar, or making arrangements for authorized parking; and

(b) By making payment to the operator of all airport charges or by posting with the operator a sufficient cash bond or other security acceptable to such operator, to be held in trust by the operator pending written agreement of the parties with respect to payment by the aircraft owner of the amount owing, or pending resolution of charges in a civil action in a court of competent jurisdiction, the trust shall terminate and the airport operator shall receive so much of the bond or other security as is necessary to satisfy any judgment, costs, and interest as may be awarded to the airport operator. The balance shall be refunded immediately to the owner at the owner's last known address by registered mail, return receipt requested. The airport operator shall send to the owner by first class mail a notice that the balance of funds was forwarded to him or her by registered mail, return receipt requested.

(4) If an aircraft parked or hangared at an airport is abandoned, the airport operator may authorize the public sale of the aircraft by authorized personnel to the highest and best bidder for cash as follows:

(a) If an aircraft has been secured by the airport operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within one hundred eighty days after notifying the owner under subsection (1) of this section, or in all other cases, for one hundred eighty days after the operator secures the aircraft, the aircraft shall be conclusively presumed to have been abandoned by the owner;

(b) Before the aircraft is sold, the owner of the aircraft shall be given at least twenty days' notice of sale by registered mail, return receipt requested and the notice of sale shall be published at least once, more than ten but less than twenty days before the sale, in a newspaper of general circulation in the county in which the airport is located. The notice shall include the name of the aircraft, if any, its aircraft identification number, the last known owner and address, the time and place of sale, the amount of airport charges that will be owing at the time of sale, a reasonable description of the aircraft to be sold and that the airport operator may bid all or part of its airport charges at the sale and may become a purchaser at the sale;

(c) The proceeds of a sale under this section shall first be applied to payment of airport charges owed. The balance, if any, shall be deposited with the department of revenue to be held in trust for the owner or owners and lienholders for a period of one year. If more than one owner appears on the aircraft title, and/or if any liens appear on the title, the department must, if a claim is made, interplead the balance into a court of competent jurisdiction for distribution. The department may release the balance to the legal owner provided that the claim is

made within one year of sale and only one legal owner and no lienholders appear on the title. If no valid claim is made within one year of the date of sale, the excess funds from the sale shall be deposited in the aircraft search and rescue, safety, and education account created in RCW 47.68.236. If the sale is for a sum less than the applicable airport charges, the airport operator is entitled to assert a claim against the aircraft owner or owners for the deficiency.

(5) The regulations authorized under this section shall be enforceable only if:

(a) The airport operator has had its tariff and/or regulations, including any and all regulations authorizing the impoundment of an aircraft that is the subject of delinquent airport charges, conspicuously posted at the airport manager's office.

(b) All impounding remedies available to the airport operator are included in any written contract for airport charges between an airport operator and an aircraft owner; and

(6) All rules and regulations authorized under this section are adopted either pursuant to chapter 34.04 RCW, or by resolution of the appropriate legislative authority, as applicable. [1987 c 254 § 2.]

14.08.160 Federal aid. (1) A municipality is authorized to accept, receive, and receipt for federal moneys and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon airports and other air navigation facilities.

(2) The governing body of any municipality is authorized to designate the state secretary of transportation as its agent to accept, receive, and receipt for federal moneys on its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, and may enter into an agreement with the secretary of transportation prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and applicable laws of this state. Such moneys as are paid over by the United States government shall be paid over to the municipality under such terms and conditions as may be imposed by the United States government in making the grant.

(3) All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the state secretary of transportation, shall be made pursuant to the laws of this state governing the making of like contracts, except that where the acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal moneys, the municipality or the secretary of

transportation, as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary. [1984 c 7 § 6; 1945 c 182 § 9; Rem. Supp. 1945 § 2722-38. Formerly RCW 14.08.160, 14.08.170, and 14.08.180.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.08.190 Establishment of airports on waters and reclaimed land. (1) The powers herein granted to a municipality to establish and maintain airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

(2) All the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land. [1945 c 182 § 10; Rem. Supp. 1945 § 2722-39.]

14.08.200 Joint operations. (1) All powers, rights, and authority granted to any municipality in this chapter may be exercised and enjoyed by two or more municipalities, or by this state and one or more municipalities therein, acting jointly, either within or outside the territorial limits of either or any of the municipalities and within or outside this state, or by this state or any municipality therein acting jointly with any other state or municipality therein, either within or outside this state if the laws of the other state permit such joint action.

(2) For the purposes of this section only, unless another intention clearly appears or the context requires otherwise, this state is included in the term "municipality," and all the powers conferred upon municipalities in this chapter, if not otherwise conferred by law, are conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the "governing body" of a municipality, that term means, as to the state, its secretary of transportation.

(3) Any two or more municipalities may enter into agreements with each other, duly authorized by ordinances or resolution, as may be appropriate, for joint action under this section. Concurrent action by the governing bodies of the municipalities involved constitutes joint action.

(4) Each such agreement shall specify its terms; the proportionate interest which each municipality shall have in the property, facilities, and privileges involved,

and the proportion of preliminary costs, cost of acquisition, establishment, construction, enlargement, improvement, and equipment, and of expenses of maintenance, operation, and regulation to be borne by each, and make such other provisions as may be necessary to carry out the provisions of this section. It shall provide for amendments thereof and for conditions and methods of termination; for the disposition of all or any part of the property, facilities, and privileges jointly owned if the property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this section or if the agreement is terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assumption or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

(5) Municipalities acting jointly as authorized in this section shall create a board from the inhabitants of the municipalities for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating, and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. The board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms as to compensation, if any, as may be provided for in the agreement.

(6) Each such board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

(7) Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of the municipalities granted by this chapter, except as provided in this section. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by approval of the governing bodies of each of the municipalities involved. Upon the approval of the governing body, or if no approval is necessary then upon the board's own determination, such property may be acquired by private negotiation under such terms and conditions as seem just and proper to the board. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding December 1st, of a budget for the ensuing calendar year, which budget may be amended or supplemented by joint resolution of the municipalities involved during the calendar year for which the original budget was approved. Rules and regulations provided for by RCW 14.08.120(2) become effective only upon approval of each of the appointing governing bodies. No real property and no airport, other navigation facility, or air protection privilege, owned jointly, may be disposed

of by the board by sale except by authority of all the appointing governing bodies, but the board may lease space, land area, or improvements and grant concessions on airports for aeronautical purposes, or other purposes which will not interfere with the aeronautical purposes of such airport, air navigation facility, or air protection privilege by private negotiation under such terms and conditions as seem just and proper to the board, subject to the provisions of RCW 14.08.120(4). Subject to the provisions of the agreement for the joint venture, and when it appears to the board to be in the best interests of the municipalities involved, the board may sell any personal property by private negotiations under such terms and conditions as seem just and proper to the board.

(8) Each municipality, acting jointly with another pursuant to the provisions of this section, is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by RCW 14.08.120(2), and to fix by such ordinances penalties for the violation thereof. When so adopted, the ordinances have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or outside the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of the municipalities in the same manner as are its individual ordinances. The consent of the state secretary of transportation to any such ordinance, where the state is a party to the joint venture, is equivalent to the enactment of the ordinance by a municipality. The publication provided for in RCW 14.08.120(2) shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

(9) Condemnation proceedings shall be instituted, in the names of the municipalities jointly, and the property acquired shall be held by the municipalities as tenants in common. The provisions of RCW 14.08.030(2) apply to such proceedings.

(10) For the purpose of providing funds for necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which each of the municipalities involved shall deposit its proportionate share as provided by the joint agreement. Such funds shall be provided for by bond issues, tax levies, and appropriations made by each municipality in the same manner as though it were acting separately under the authority of this chapter. The revenues obtained from the ownership, control, and operation of the airports and other air navigation facilities jointly controlled shall be paid into the fund, to be expended as provided in this chapter. Revenues in excess of cost of maintenance and operating expenses of the joint properties shall be divided or allowed to accumulate for future anticipated expenditures as may be provided in the original agreement, or amendments thereto, for the joint venture. The action of municipalities involved in heretofore permitting such revenues to so accumulate is declared to be legal and valid.

(11) The governing body may by joint directive designate some person having experience in financial or fiscal

matters as treasurer of the joint operating agency. Such a treasurer shall possess all the powers, responsibilities, and duties that the county treasurer and auditor possess for a joint operating agency related to creating and maintaining funds, issuing warrants, and investing surplus funds. The governing body may, and if the treasurer is not the county treasurer it shall, require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the governing body finds will protect the joint operating agency. The premium on such bond shall be paid by the joint operating agency. All disbursements from the joint fund shall be made by order of the board in accordance with such rules and regulations and for such purposes as the appointing governing bodies, acting jointly, shall prescribe. If no such joint directive is made by the governing appointing bodies to designate a treasurer, then the provisions of RCW 43.09.285 apply to such joint fund.

(12) Specific performance of the provisions of any joint agreement entered into as provided for in this section may be enforced as against any party thereto by the other party or parties thereto. [1987 c 254 § 4; 1984 c 7 § 7; 1967 c 182 § 1; 1949 c 120 § 1; 1945 c 182 § 11; Rem. Supp. 1949 § 2722-40. Formerly RCW 14.08.200 through 14.08.280.]

Severability—1984 c 7: See note following RCW 47.01.141.

Joint operations by municipal corporations or political subdivisions, deposit and control of funds: RCW 43.09.285.

14.08.290 County airport districts authorized. The establishment of county airport districts is hereby authorized. Written application for the formation of such a district signed by at least one hundred registered voters, who reside and own real estate in the proposed districts, shall be filed with the board of county commissioners. The board shall immediately transmit the application to the proper registrar of voters for the proposed district who shall check the names, residence and registration of the signers with the records of his office and shall, as soon as possible, certify to said board the number of qualified signers. If the requisite number of signers is so certified, the board shall thereupon place the proposition: "Shall a county airport district be established in the following area: (describing the proposed district)?," upon the ballot for vote of the people of the proposed district at the next election, general or special. If a majority of the voters on such proposition shall vote in favor of the proposition, the board, shall, by resolution, declare the district established. If the requisite number of qualified persons have not signed the application, further signatures may be added and certified until the requisite number have signed and the above procedure shall be thereafter followed.

The area of such district may be the area of the county including incorporated cities and towns, or such portion or portions thereof as the board may determine to be the most feasible for establishing an airport. When established, an airport district shall be a municipality as defined in this chapter and entitled to all the powers conferred by this chapter and exercised by municipal

corporations in this state. The airport district is hereby empowered to levy not more than seventy-five cents per thousand dollars of assessed value of the property lying within the said airport district: *Provided, however,* Such levy shall not be made unless first approved at any election called for the purpose of voting on such levy. [1973 1st ex.s. c 195 § 1; 1949 c 194 § 1; 1945 c 182 § 12; Rem. Supp. 1949 § 2722-41.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

14.08.300 Governing body of district. The governing body of a county airport district shall be the board of county commissioners except as in this chapter provided. [1951 c 114 § 1; 1945 c 182 § 13; Rem. Supp. 1945 § 2722-42.]

14.08.302 Board of airport district commissioners—Petition—Order establishing. One hundred or more registered voters in any county airport district may make, sign and file a petition with the board of county commissioners asking that thereafter the airport district be governed by a board of airport district commissioners. Within ten days after receipt of such petition, the board of county commissioners shall check the petition. If the petition be found adequate and to be signed by the prescribed number of legal voters, the board of county commissioners shall within a reasonable time call a public hearing, notice of which shall be given by publication one week in advance thereof in a newspaper circulating within the district, at which arguments shall be heard for or against the proposal and if it shall appear to the county commissioners that the residents of the district so desire they shall enter an order declaring that the county airport district shall be governed by a board of three airport district commissioners. [1951 c 114 § 2.]

14.08.304 Board of airport district commissioners—Members—Election—Terms—Expenses. The board of airport district commissioners shall consist of three members, who shall each be a registered voter and actually a resident of the district. The first commissioners shall be appointed by the county legislative authority. At the next general district election, held as provided in RCW 29.13.020, three airport district commissioners shall be elected. The term of office of airport district commissioners shall be two years, or until their successors are elected and qualified and have assumed office in accordance with RCW 29.04.170. Members of the board of airport district commissioners shall be elected at each regular general election on a nonpartisan basis. They shall be nominated by petition of ten registered voters of the district. Vacancies on the board of airport district commissioners shall be filled by appointment by the remaining commissioners. Members of the board of airport district commissioners shall receive no compensation for their services, but shall be reimbursed for actual necessary traveling and sustenance expenses incurred while engaged on official business. [1979 ex.s. c 126 § 3; 1951 c 114 § 3.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Nonpartisan primaries and elections: Chapter 29.21 RCW.

14.08.310 Assistance to other municipalities. Whenever the governing body of any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality in exercising the powers and authority granted by this chapter, such first-mentioned municipality is expressly authorized and empowered to furnish such assistance by gift, or lease with or without rental, of real property, by the donation, lease with or without rental, or loan, of personal property, and by the appropriation of moneys, which may be provided for by taxation or the issuance of bonds in the same manner as funds might be provided for the same purposes if the municipality were exercising the powers heretofore granted in its own behalf. [1945 c 182 § 14; Rem. Supp. 1945 § 2722-43.]

14.08.330 Jurisdiction of municipality over airport and facilities exclusive—Concurrent jurisdiction over adjacent territory—Fire code enforcement by agreement. Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of this chapter, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it. The municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in RCW 14.08.120(2). No other municipality in which the airport or air navigation facility is located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations. However, by agreement with the municipality operating and controlling the airport or air navigation facility, a municipality in which an airport or air navigation facility is located may be responsible for the administration and enforcement of the uniform fire code, as adopted by that municipality under RCW 19.27.040, on that portion of any airport or air navigation facility located within its jurisdictional boundaries. [1985 c 246 § 1; 1945 c 182 § 15; Rem. Supp. 1945 § 2722-44.]

14.08.340 Interpretation and construction. This act shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics. [1945 c 182 § 17; Rem. Supp. 1945 § 2722-46.]

14.08.350 Severability—1945 c 182. If any provision of this act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1945 c 182 § 16.]

14.08.360 Short title. This act may be cited as the "Revised Airports Act." [1945 c 182 § 18.]

14.08.370 Repeal. All acts and parts of acts in conflict with this act are hereby repealed. [1945 c 182 § 19.]

**Chapter 14.12
AIRPORT ZONING**

Sections	
14.12.010	Definitions.
14.12.020	Airport hazards contrary to public interest.
14.12.030	Power to adopt airport zoning regulations.
14.12.050	Relation to comprehensive zoning regulations.
14.12.070	Procedure for adoption of zoning regulations.
14.12.090	Airport zoning requirements.
14.12.110	Permits and variances.
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14.12.180	Administration of airport zoning regulations.
14.12.190	Appeals.
14.12.200	Judicial review.
14.12.210	Enforcement and remedies.
14.12.220	Acquisition of air rights.
14.12.900	Severability—1945 c 174.
14.12.910	Short title.

Municipal airports, subject to county's comprehensive plan and zoning ordinances: RCW 35.22.415.

Planning commissions: Chapter 35.63 RCW.

14.12.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Airports" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

(2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(4) "Political subdivision" means any county, city, town, port district or other municipal or quasi municipal corporation authorized by law to acquire, own or operate an airport.

(5) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, including the state and its political subdivisions, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth. [1945 c 174 § 1; Rem. Supp. 1945 § 2722-15.]

14.12.020 Airport hazards contrary to public interest. It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of

aircraft thus tending to destroy or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (2) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (3) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein. [1945 c 174 § 2; Rem. Supp. 1945 § 2722–16.]

14.12.030 Power to adopt airport zoning regulations.

(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed. [1945 c 174 § 3; Rem. Supp. 1945 § 2722–17. Formerly RCW 14.12.030 and 14.12.040.]

14.12.050 Relation to comprehensive zoning regulations.

(1) Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) Conflict. In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area,

whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail. [1945 c 174 § 4; Rem. Supp. 1945 § 2722–18. Formerly RCW 14.12.050 and 14.12.060.]

14.12.070 Procedure for adoption of zoning regulations.

(1) Notice and hearing. No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in RCW 14.12.030(2), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

(2) Airport zoning commission. Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission. [1945 c 174 § 5; Rem. Supp. 1945 § 2722–19. Formerly RCW 14.12.070 and 14.12.080.]

Public meetings: Chapter 42.30 RCW.

14.12.090 Airport zoning requirements.

(1) Reasonableness. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) Nonconforming uses. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in RCW 14.12.110(3). [1945 c 174 § 6; Rem. Supp. 1945 § 2722–20. Formerly RCW 14.12.090 and 14.12.100.]

14.12.110 Permits and variances. (1) Permits. Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

(2) Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter: *Provided*, That any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard. [1945 c 174 § 7; Rem. Supp. 1945 § 2722–21. Formerly RCW 14.12.110, 14.12.120, and 14.12.130.]

14.12.140 Board of adjustment. (1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in RCW 14.12.190.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under RCW 14.12.110(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record. [1945 c 174 § 10; Rem. Supp. 1945 § 2722–24. Formerly RCW 14.12.140, 14.12.150, 14.12.160 and 14.12.170.]

14.12.180 Administration of airport zoning regulations. All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under RCW 14.12.110(1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. [1945 c 174 § 9; Rem. Supp. 1945 § 2722–23.]

14.12.190 Appeals. (1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision or [of] such an administrative agency is an improper application

of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the board or notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken. [1945 c 174 § 8; Rem. Supp. 1945 § 2722–22.]

14.12.200 Judicial review. (1) Any person aggrieved, or taxpayer affected, by any decision of the board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is illegal, may present to the superior court of the county in which the airport is located a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the decision is filed in the office of the board.

(2) Upon presentation of such petition the court may allow a writ of review directed to the board of adjustment to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a supersedeas.

(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

(6) In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land. [1945 c 174 § 11; Rem. Supp. 1945 § 2722–25.]

14.12.210 Enforcement and remedies. Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall constitute a misdemeanor, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto. [1945 c 174 § 12; Rem. Supp. 1945 § 2722–26.]

14.12.220 Acquisition of air rights. In any case in which: (1) It is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public

purposes, such air right, avigation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter. [1945 c 174 § 13; Rem. Supp. 1945 § 2722-27.]

14.12.900 Severability—1945 c 174. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1945 c 174 § 14.]

14.12.910 Short title. This act shall be known and may be cited as the "Airport Zoning Act." [1945 c 174 § 15.]

Chapter 14.16

AIRCRAFT AND AIRMAN REGULATIONS

Sections

14.16.010	Definitions.
14.16.020	Federal licensing of aircraft required.
14.16.030	Federal licensing of airmen.
14.16.040	Possession of license.
14.16.050	Traffic rules.
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14.16.090	Certain aircraft to carry survival kit—Contents— Misdemeanor to operate without—Exceptions.
14.16.900	Severability—1929 c 157.

14.16.010 Definitions. In this chapter "aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. The term "airman" means any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way and any individual who is in charge of the inspection, overhauling, or repairing of aircraft. "Operating aircraft" means performing the services of aircraft pilot. "Person" means any individual, proprietorship, partnership, corporation, or trust. "Downed aircraft rescue transmitter" means a transmitter of a type approved by the state department of transportation or the federal aviation administration with sufficient transmission power and reliability that it will be automatically activated upon the crash of an aircraft so as to transmit a signal on a preset frequency so that it will be effective to assist in the location of the downed aircraft. "Air school" means air school as defined in RCW 47.68.020(11). [1984 c 7 § 8; 1969 ex.s. c 205 § 1; 1929 c 157 § 1; RRS § 2722-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.16.020 Federal licensing of aircraft required. The public safety requiring and the advantages of uniform

regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate any aircraft within this state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States government then in force: *Provided, however,* That for the first thirty days after entrance into this state this section shall not apply to aircraft owned by a nonresident of this state other than aircraft carrying persons or property for hire, if such aircraft is licensed and registered and displays identification marks in compliance with the laws of the state, territory or foreign country of which its owner is a resident. [1929 c 157 § 2; RRS § 2722-2.]

Aircraft certificates required: RCW 47.68.230.

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.030 Federal licensing of airmen. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that a person serving as an airman within this state should have the qualifications necessary for obtaining and holding the class of license required by the United States government with respect to such an airman subject to its jurisdiction, it shall be unlawful for any person to serve as an airman within this state unless he have such a license: *Provided, however,* That for the first thirty days after entrance into this state this section shall not apply to nonresidents of this state operating aircraft within this state, other than aircraft carrying persons or property for hire, if such person shall have fully complied with the laws of the state, territory or foreign country of his residence respecting the licensing of airmen. [1929 c 157 § 3; RRS § 2722-3.]

Airman certificates required: RCW 47.68.230.

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.040 Possession of license. The certificate of the license herein required shall be kept in the personal possession of the licensee when he is serving as an airman within this state, and must be presented for inspection upon the demand of any passenger, any peace officer of this state, or any official, manager, or person in charge of any airport or landing field in this state upon which he shall land. [1929 c 157 § 4; RRS § 2722-4.]

14.16.050 Traffic rules. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that any person operating aircraft within this state should conform to the air traffic rules now or hereafter established by the secretary of commerce of the United States for the navigation of aircraft subject to the jurisdiction of the United States, it shall be unlawful for any person to navigate any aircraft within this state otherwise than in

conformity with said air traffic rules. [1929 c 157 § 5; RRS § 2722-5.]

Federal aviation program: Title 49, chapter 20, U.S.C.

14.16.060 Penalty. Any person who violates any provision of this chapter shall be guilty of an offense punishable by a fine of not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment. [1929 c 157 § 6; RRS § 2722-6.]

14.16.080 Downed aircraft rescue transmitter required—Exceptions. Any aircraft used to carry persons or property for compensation, or any aircraft that is rented or leased without a pilot, shall be equipped with a fully functional downed aircraft rescue transmitter and it shall be unlawful for any person to operate such aircraft without such a transmitter: *Provided, however,* Nothing in this section shall apply to (1) Instructional flights by an air school, with the exception of solo flights by students; (2) aircraft owned by and used exclusively in the service of the United States government; (3) aircraft registered under the laws of a foreign country; (4) aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft; and (5) aircraft used by any air carrier or supplemental air carrier operating in accordance with the provisions of a certificate of public conveyance and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended. [1987 c 273 § 1; 1969 ex.s. c 205 § 2.]

14.16.090 Certain aircraft to carry survival kit—Contents—Misdemeanor to operate without—Exceptions. (1) Any aircraft used to carry persons or property for compensation, or any aircraft that is rented or leased without a pilot shall be equipped with a survival kit consisting of those items prescribed by the department of transportation, which shall include, at least the following: (a) A tube tent or similar sheltering device; (b) a horn, whistle, or similar audible device capable of emitting a signal one-quarter of a mile; (c) a mirror; (d) matches; (e) a candle and/or another fire-starting device; and (f) survival instruction.

(2) It shall be unlawful for any person to operate such aircraft without such a survival kit: *Provided, however,* That nothing in this section shall apply to: (a) Instructional flights by an air school, with the exception of solo flights by students; (b) aircraft owned by and exclusively in the service of the United States government; (c) aircraft registered under the laws of a foreign country; (d) aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft; and (e) aircraft used by any air carrier or supplemental air carrier operating in accordance with the provisions of a certificate of public conveyance and necessity under the provisions of the federal aviation act of 1958, Public Law 85-726, as amended. [1987 c 273 § 2.]

14.16.900 Severability—1929 c 157. If any provision of this act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the application of such provision to other persons and circumstances shall not be affected thereby. [1929 c 157 § 7.]

Chapter 14.20 AIRCRAFT DEALERS

Sections

14.20.010	Definitions.
14.20.020	Unlawful to act as aircraft dealer without current license—Application.
14.20.030	Application for license—Contents.
14.20.040	Certificates.
14.20.050	License and certificate fees.
14.20.060	Payment of fees—Fund—Possession and display of licenses and certificates.
14.20.070	Surety bonds.
14.20.080	Branches and subagencies.
14.20.090	Denial, suspension, revocation of license—Grounds.
14.20.100	Appeal from secretary's order.

Aircraft excise tax: Chapter 82.48 RCW.

14.20.010 Definitions. When used in this chapter and RCW 47.68.250 and 82.48.100:

(1) "Person" includes a firm, partnership, or corporation;

(2) "Dealer" means a person engaged in the business of selling, exchanging, or acting as a broker of aircraft;

(3) "Aircraft" means any weight-carrying device or structure for navigation of the air, designed to be supported by the air, but which is heavier than air and is mechanically driven;

(4) "Secretary" means the secretary of the state department of transportation. [1984 c 7 § 9; 1955 c 150 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.020 Unlawful to act as aircraft dealer without current license—Application. (1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter.

(2) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary. [1984 c 7 § 10; 1983 c 135 § 1; 1955 c 150 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.030 Application for license—Contents. Applications for an aircraft dealer's license shall contain:

(1) The name under which the dealer's business is conducted and the address of the dealer's established place of business;

(2) The residence address of each owner, director, or principal officer of the aircraft dealer, and, if a foreign corporation, the state of incorporation and names of its resident officers or managers;

(3) The make or makes of aircraft for which franchised, if any;

(4) Whether or not used aircraft are dealt in;

(5) A certificate that the applicant is a dealer having an established place of business at the address shown on the application, which place of business is open during regular business hours to inspection by the secretary or his representatives; and

(6) Whether or not the applicant has ever been denied an aircraft dealer's license or has had one which has been denied, suspended, or revoked. [1984 c 7 § 11; 1955 c 150 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.040 Certificates. During such time as aircraft are held by a dealer for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of the dealer's business, an aircraft dealer's certificate may be used on the aircraft in lieu of a registration certificate or fee and in lieu of payment of excise tax. The secretary shall issue one aircraft dealer's certificate with each aircraft dealer's license. Additional aircraft dealer's certificates shall be issued to an aircraft dealer upon request and the payment of the fee provided in RCW 14.20.050. Nothing contained in this section, however, may be construed to prevent transferability among dealer aircraft of any aircraft dealer's certificate, and the certificate need be displayed on dealer aircraft only while in actual use or flight. Every aircraft dealer's certificate issued expires on December 31st, and may be renewed upon renewal of an aircraft dealer's license. [1984 c 7 § 12; 1955 c 150 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.050 License and certificate fees. The fee for original aircraft dealer's license for each calendar year or fraction thereof is twenty-five dollars which includes one aircraft dealer's certificate and which may be renewed annually for a fee of ten dollars. Additional aircraft dealer certificates may be obtained for two dollars each per year. If any dealer fails or neglects to apply for renewal of his license prior to February 1st in each year, his license shall be declared canceled by the secretary, in which case any such dealer desiring a license shall apply for an original license and pay the fee required for an original license. [1984 c 7 § 13; 1955 c 150 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.060 Payment of fees—Fund—Possession and display of licenses and certificates. The fees set forth in RCW 14.20.050 shall be paid to the secretary. The fee for any calendar year may be paid on and after the first day of December of the preceding year. The secretary shall give appropriate receipts therefor. The fees collected under this chapter shall be credited to the general fund. The secretary may prescribe requirements for the possession and exhibition of aircraft dealer's licenses and aircraft dealer's certificates. [1984 c 7 § 14; 1955 c 150 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.070 Surety bonds. Before issuing an aircraft dealer license, the secretary shall require the applicant to file with the secretary a surety bond in the amount of twenty-five thousand dollars running to the state, and executed by a surety company authorized to do business in the state. The bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his business in conformity with the provisions of this chapter, RCW 47.68.250, and 82.48.100. Any person who has suffered any loss or damage by reason of any act by a dealer which constitutes ground for refusal, suspension, or revocation of license under RCW 14.20.090 has a right of action against the aircraft dealer and the surety upon the bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [1984 c 7 § 15; 1983 c 135 § 2; 1983 c 3 § 17; 1955 c 150 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.
Surety insurance: Chapter 48.28 RCW.

14.20.080 Branches and subagencies. Every dealer maintaining a branch or subagency in another city or town in this state shall be required to have a separate aircraft dealer's license for such branch or subagency, in the same manner as though each constituted a separate and distinct dealer. [1955 c 150 § 8.]

14.20.090 Denial, suspension, revocation of license—Grounds. The secretary shall refuse to issue an aircraft dealer's license or shall suspend or revoke an aircraft dealer's license whenever he has reasonable grounds to believe that the dealer has:

(1) Forged or altered any federal certificate, permit, rating, or license relating to ownership and airworthiness of an aircraft;

(2) Sold or disposed of an aircraft which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(3) Wilfully misrepresented any material fact in the application for an aircraft dealer's license, aircraft dealer's certificate, or registration certificate;

(4) Wilfully withheld or caused to be withheld from a purchaser of an aircraft any document referred to in subsection (1) of this section if applicable, or an affidavit to the effect that there are no liens, mortgages, or encumbrances of any type on the aircraft other than noted thereon, if the document or affidavit has been requested by the purchaser;

(5) Suffered or permitted the cancellation of his bond or the exhaustion of the penalty thereof;

(6) Used an aircraft dealer's certificate for any purpose other than those permitted by this chapter or RCW 47.68.250 and 82.48.100;

(7) Been adjudged guilty of a crime that directly relates to the business of an aircraft dealer and the time elapsed since the conviction is less than ten years, or had a judgment entered against the dealer within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purpose of this section, the term "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 imposition of the sentence is deferred or the penalty is suspended. [1984 c 7 § 16; 1983 c 135 § 3; 1983 c 3 § 18; 1955 c 150 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

14.20.100 Appeal from secretary's order. If the secretary issues an order that any person is not entitled to an aircraft dealer's license or that an existing license should be suspended or revoked, he shall forthwith notify the applicant or dealer in writing. The applicant has thirty days from the date of the secretary's order to appeal therefrom to the superior court of Thurston county, which he may do by filing a notice of the appeal with the clerk of the superior court and at the same time filing a copy of the notice with the secretary. [1984 c 7 § 17; 1955 c 150 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 14.30

WESTERN REGIONAL SHORT HAUL AIR TRANSPORTATION COMPACT (See chapter 81.96 RCW)

Title 15

AGRICULTURE AND MARKETING

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warehouseman's: Article 62A.7 RCW.

Macaroni and macaroni products: Chapter 69.16 RCW.

Mosquito control: Chapter 70.22 RCW.

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Chapter 15.04

GENERAL PROVISIONS

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Director as member of board of review, business registration and licensing system: RCW 19.02.040.

15.04.010 Definitions. As used in this title except where otherwise defined:

"Department" means the department of agriculture.

"Director" means the director of agriculture.

"Person" includes any individual, firm, corporation, trust, association, cooperative, copartnership, society, any other organization of individuals, and any other business unit, device, or arrangement. [1961 c 11 § 15-.04.010. Prior: (i) 1941 c 56 § 3; Rem. Supp. 1941 § 2828-4. (ii) 1941 c 56 § 4; Rem. Supp. 1941 § 2828-5. (iii) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part.]

15.04.020 Director's general duties and powers. The director may:

(1) Furnish to the board of county commissioners of each county annually, on or before September 1st, an estimate of the expenses for the ensuing year of inspecting and disinfecting the horticultural plants, fruits, vegetables and nursery stock and the places in the county where such articles are grown, packed, stored, shipped, held for shipment or delivery, or offered for sale;

(2) Appoint inspectors to enforce and carry out the provisions of this title, who may be of two classes: Inspectors—at-large and local inspectors;

(3) Adopt, promulgate and enforce such rules and regulations as are necessary to or will facilitate his carrying out of the horticultural laws he is authorized and directed to administer and enforce; and

(4) Adopt, promulgate and enforce rules and regulations:

(a) governing the grading, packing, and size and dimensions of commercial containers of fruits, vegetables, and nursery stock;

(b) fixing commercial grades of fruits, vegetables and nursery stock, and providing for the inspection thereof and issuance of certificates of inspection therefor;

(c) for the inspection, grading and certifying of growing crops of agricultural and vegetable seeds and the fixing and collecting of fees for such services;

(d) covering the collection of native plants and parts thereof, and when the manner of collection is destructive of the plants, prohibiting such collecting;

(e) establishing quarantine measures and methods for the protection of agricultural and horticultural crops and products and the control or eradication of pests and diseases injurious thereto. [1981 c 296 § 1; 1977 c 75 § 7; 1961 c 11 § 15.04.020. Prior: (i) 1943 c 150 § 2, part; 1927 c 311 § 2, part; 1921 c 141 § 2, part; 1919 c 195 § 1, part; 1915 c 166 § 2, part; Rem. Supp. 1943 § 2840, part. (ii) 1941 c 20 § 15; 1935 c 168 § 3; Rem. Supp. 1941 § 2849-2f.]

Severability—1981 c 296: "If any provision of this amendatory 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." [1981 c 296 § 40.]

15.04.030 Duties and powers of director, supervisor and inspectors. The director, supervisor and horticultural inspectors may:

(1) Inspect all horticultural premises, fruits, vegetables, nursery stock, horticultural supplies, and other

properties which are subject to infection by pests or diseases; require the owners or persons in charge of any infected property to disinfect the same; disinfect the same in case the owner or person in charge fails, after notice, to do so; condemn and destroy properties which cannot be successfully disinfected; have free access to any such premises or properties at any time;

(2) Require all such products held for shipment which are partially infected, to be sorted and repacked, and if the owner or person in charge after notice fails to do so, they may condemn and destroy them: *Provided*, That no inspector shall destroy more than ten percent of any variety of nursery stock in any lot or shipment of fifty or more trees, vines, or shrubs without five days' notice to the shipper, during which time the owner or shipper may appeal to the supervisor;

(3) At the request of the owner, inspect his fruit, vegetables, and nursery stock and all other horticultural plants and products and premises where growing or grown, for diseases and pests, and report to him the result of such investigation and prescribe proper remedies;

(4) Issue certificates of inspection to licensed nurserymen and dealers in nursery stock, on stock inspected and approved; and

(5) Inspect or audit, during business hours, the records of any grower of or dealer in nursery stock, to determine the kind of license required by him. [1981 c 296 § 2; 1961 c 11 § 15.04.030. Prior: 1943 c 150 § 2, part; 1927 c 311 § 2, part; 1921 c 141 § 2, part; 1919 c 195 § 1, part; 1915 c 166 § 2, part; Rem. Supp. 1943 § 2840, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.04.040 Inspectors-at-large—Qualifications—Work assignments—Compensation—Travel expenses. Inspectors-at-large shall pass such an examination by the director as will satisfy him they are qualified in knowledge and experience to carry on the work in the districts to which they are assigned. They shall be assigned to a horticultural inspection district and may be transferred from one district to another. Their salaries and travel expenses, as shown by vouchers verified by them and countersigned by the director, shall be paid by warrants drawn upon the state treasurer, horticultural inspection district funds, the horticultural inspection trust fund, or from county appropriations. [1987 c 393 § 1; 1975-'76 2nd ex.s. c 34 § 11; 1961 c 11 § 15.04.040. Prior: 1957 c 163 § 3; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

Effective date—**Severability**—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.04.060 Local inspectors—Petition by owners for assistance in combating infection. Whenever twenty-five or more resident freeholders of any county, each of whom is the owner of an orchard, berry farm, cultivated cranberry marsh or nursery, present a petition to the board of commissioners stating that certain horticultural premises in the county are infected and the petitioners

desire the help of inspectors in combating the infection, the board shall by resolution request the director to appoint and assign to that county such a number of local horticultural inspectors for such time as the petition specifies. [1961 c 11 § 15.04.060. Prior: 1957 c 163 § 4; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

15.04.070 Local inspectors—Qualifications—Control of. Said local inspectors shall satisfy the director, by examination, that their knowledge and experience qualifies them to successfully perform horticultural inspection work. All local inspectors are under the direction and control of the director and supervisor. [1981 c 296 § 3; 1961 c 11 § 15.04.070. Prior: 1957 c 163 § 5; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.04.080 Inspections in absence of local inspector. If any county fails to appoint a county horticultural inspector, or he is not available, the nearest available inspector may perform the services, and his compensation and necessary expenses shall be charged against said county.

If any inspector is dismissed from the service, or is assigned to another county or other duties, any qualified inspector or officer of the department may continue or complete any work initiated by him. [1961 c 11 § 15.04.080. Prior: 1957 c 163 § 6; prior: 1949 c 89 § 1, part; 1943 c 150 § 3, part; 1931 c 27 § 1, part; 1923 c 37 § 1, part; 1921 c 141 § 3, part; 1915 c 166 § 3, part; Rem. Supp. 1949 § 2841, part.]

15.04.090 Lease of unnecessary lands to nonprofit groups—Funds. The director of agriculture may, at his discretion, for a period of not to exceed ten years, lease state lands which are now or may hereafter be, under his direction and control, the retention of which he deems unnecessary for present state purposes or needs, to any nonprofit group or organization having educational, agricultural or youth development purposes. Such leases shall be upon such terms as the director deems beneficial to the state. All rental funds received by the director under the provisions of this section shall be deposited in the "fair fund" provided in RCW 67.16-.100. [1961 c 11 § 15.04.090. Prior: 1953 c 119 § 1.]

15.04.100 Horticulture inspection trust fund. The director shall establish a horticulture inspection trust fund to be derived from horticulture inspection district funds. The director shall adjust district payments so that the balance in the trust fund shall not exceed three hundred thousand dollars. The director is authorized to make payments from the trust fund to:

(1) Pay fees and expenses provided in the inspection agreement between the state department of agriculture and the agricultural marketing service of the United States department of agriculture;

(2) Assist horticulture inspection districts in temporary financial distress as result of less than normal production of horticultural commodities: *Provided*, That districts receiving such assistance shall make repayment to the trust fund as district funds shall permit;

(3) Pay necessary administrative expenses for the commodity inspection division attributable to the supervision of the horticulture inspection services. [1987 c 393 § 2; 1986 c 203 § 1; 1969 ex.s. c 76 § 1; 1961 c 11 § 15.04.100. Prior: 1959 c 152 § 1; 1957 c 163 § 1.]

Severability—1986 c 203: "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." [1986 c 203 § 25.]

15.04.110 Control of predatory birds. The director of the state department of agriculture may control birds which he determines to be injurious to agriculture, and for this purpose enter into written agreements with the federal and state governments, political subdivisions and agencies of such governments, political subdivisions and agencies of this state including counties, municipal corporations and associations and individuals, when such cooperation will implement the control of predatory birds injurious to agriculture. [1961 c 247 § 1.]

15.04.120 Control of predatory birds—Expenditures and contracts. For the purpose of carrying out the provisions of RCW 15.04.110 the director may make expenditures and contract for personal services, control materials and equipment as required to carry out such predatory bird control functions. [1961 c 247 § 2.]

15.04.150 Berry harvesting by youthful workers—Legislative finding. The legislature finds that the crops of berry growers in the state are imperiled by a recent change in the federal law relating to youthful agricultural workers. Since the berry harvest season is so short that few migrant agricultural workers find the trip to this state to pick berries worth the trouble, the long-established use of younger pickers must be permitted to the extent where such employment will not interfere with interstate commerce and the federal law. Further, the legislature finds that such employment is healthful, a good indoctrination for youth in the work ethic and the role of agriculture in society, and an opportunity youths welcome to earn extra spending money. [1975 1st ex.s. c 238 § 1.]

15.04.160 Berry harvesting by youthful workers—Authorized—Restrictions. (1) An employee engaged to pick berries in this state outside of school hours for the school district where such employee is living while so employed may be less than twelve years of age: *Provided*, That (a) the employee is employed with the consent of his parent or person standing in the place of his parent, (b) the berries are for sale within the state only, and are not to be shipped out of the state in any form; (c) the secretary of agriculture or his designated representative has certified that there are not sufficient workers available in the immediate area to harvest the crop without such youthful employees, and (d) all employees

of any employer engaging youthful employees are paid at the same rate for picking berries.

(2) Each basket, package, or other container containing berries or berry products picked by an employee under twelve years of age shall be distinctively marked so as to insure that the berries do not enter interstate commerce: *Provided however*, That nothing in RCW 15.04.150 and 15.04.160 shall apply to employers who are exempt from the federal fair labor standards act. [1975 1st ex.s. c 238 § 2.]

15.04.200 Expenditures for agricultural development or trade promotion and promotional hosting—Approval by commodity commission—Exemption from housing requirements. (1) Under the authority of Article VIII of the state Constitution as amended, agricultural commodity commission expenditures for agricultural development or trade promotion and promotional hosting by an agricultural commodities commission under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.88, and 16.67 RCW shall be pursuant to specific budget items as approved by the agricultural commodity commission at the annual public hearings on the agricultural commodity commission budget.

(2) Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents or commissioners. The rules shall identify officials and agents authorized to make expenditures and the objectives of the expenditures. Individual agricultural commodity commission commissioners shall make promotional hosting expenditures, or seek reimbursements for these expenditures, only in those instances where the expenditures have been approved by the agricultural commodity commission. All payments and reimbursements shall be identified and supported on vouchers.

(3) Agricultural commodity commissions shall be exempt from the requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW. [1987 c 452 § 16; 1986 c 203 § 24; 1985 c 26 § 1.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—1986 c 203: See note following RCW 15.04.100.

Effective date—Contingency—1985 c 26: "This act shall take effect January 1, 1986, if the proposed amendment to Article VIII, of the state Constitution authorizing agricultural commodity assessments for agricultural development or trade promotion and promotional hosting to be deemed a public use for a public purpose is validly submitted to and is approved and ratified by the voters at a general election held in November 1985. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1985 c 26 § 2.] The proposed constitutional amendment was approved by the voters on November 5, 1985. See Article VIII, section 11 of the state Constitution.

15.04.300 Guide to state and federal programs of assistance to farm families. The department of agriculture is authorized to develop, in cooperation with Washington State University and other state agencies, an informational guide to programs offered by state and federal agencies which would be of assistance to farm families. The informational guide shall be made available to

farmers and ranchers through county extension offices, farm organizations, and other appropriate means. [1987 c 393 § 26.]

Chapter 15.08

HORTICULTURAL PESTS AND DISEASES

Sections

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15.08.010 Definitions. As used in this chapter:

(1) "Supervisor" means an assistant director known as the supervisor of plant industry.

(2) "Horticultural premises" includes orchards, vineyards, nurseries, berry farms, vegetable farms, cultivated cranberry marshes, packing houses, dryhouses, warehouses, depots, docks, cars, vessels and other places where nursery stock, fruits, vegetables and other horticultural products are grown, stored, packed, shipped, held for shipment or delivery, sold or otherwise disposed of.

(3) "Nursery stock" includes, but is not limited to, any horticultural, floricultural, viticultural, and vegetable plant, for planting, propagation or ornamentation, growing or otherwise, including cut plant material.

(4) "Pests and diseases" means, but is not limited to, any living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal, bacteria, fungus, other parasitic plant, weed, or reproductive part thereof, virus or any organism similar to or allied with any of the foregoing, or any infectious substance, which

can directly or indirectly injure or cause disease or damage in or to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Nuisance" means any plant, produce or property found in any commercial area upon which is found any pest or disease that is or may be a source of infestation of other properties.

(6) "Commercial area" means a district where any horticultural product is being produced to the extent that a producer is dependent thereon, in whole or in part, for his livelihood.

(7) "Infect," and its derivatives "infected," "infecting," and "infection," means affected by or infested with pests or diseases as above defined.

(8) "Disinfect," and its derivatives, means the control, cure, or eradication of such pests or diseases by cutting or destroying infected parts or the application of effective pesticides. [1981 c 296 § 4; 1961 c 11 § 15.08.010. Prior: (i) 1943 c 150 § 1, part; 1937 c 148 § 1, part; 1927 c 311 § 1, part; 1921 c 141 § 1, part; 1915 c 166 § 1, part; Rem. Supp. 1943 § 2839, part. (ii) 1941 c 20 § 2; Rem. Supp. 1941 § 2849-1b. (iii) 1941 c 20 § 3; Rem. Supp. 1941 § 2849-1c. (iv) 1941 c 20 § 4; Rem. Supp. 1941 § 2849-1d. (v) 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.08.020 Methods of prevention, control and disinfection. The following methods shall be used for the prevention, control or disinfection of pests and diseases:

(1) Bacterial diseases, removal and destruction of infected plant or part thereof, care being used to disinfect removal tools to prevent infection therefrom;

(2) fungus diseases, spraying with effective fungicide;

(3) chewing or sucking insect pests, spraying with effective insecticide;

(4) fungus insect pests, spraying with other effective solutions or emulsions described in circulars issued by the director. [1961 c 11 § 15.08.020. Prior: 1923 c 37 § 3, part; 1921 c 141 § 4, part; 1915 c 166 § 5, part; RRS § 2843, part.]

15.08.025 Disinfection of fruit trees—Procedures to be followed. The method for disinfecting fruit trees required to be disinfected under the provisions of this chapter shall be as prescribed in the official published recommendations of the Washington State University for the proper prevention, control and eradication of pests and diseases of fruit trees.

Whenever specific recommendations for disinfecting fruit trees are not set forth in the official published recommendations of the Washington State University, the generally accepted horticultural practices for the prevention, control and eradication of any pests and diseases in the producing area shall be used.

The burden of proving that the proper procedures as set forth in this section have been followed shall be upon the person ordered to disinfect fruit trees.

The disinfection of fruit trees as in this section set forth shall in no way limit the authority of the inspection board to determine that such fruit trees constitute a

nuisance and thus shall be subject to removal as provided for in this chapter. [1981 c 296 § 5; 1965 c 27 § 2.]

Severability—1981 c 296: See note following RCW 15.04.020.

Purpose—1965 c 27: "The production of tree fruits in the state of Washington is a major agricultural industry promoting the general economic welfare of the state and beneficial to the health of the public. The proper maintenance of fruit tree orchards to insure the continued and increased benefits to the health and welfare of the state makes it necessary to prevent, eradicate and control any pests or diseases which are or may be injurious to such fruit trees and the produce therefrom. Such prevention, eradication and control of pests and diseases which are or may be injurious to fruit trees and their crops may require chemical or biological control or removal of host trees which may be hosts and breeding places for such diseases and pests. The provisions of this act are adopted under the police power of the state for the purpose of protecting its health and general welfare, presently and in the future." [1965 c 27 § 1.] This applies to RCW 15.08.025.

15.08.030 Duty to disinfect, destroy—Disposal of cuttings. It is the duty of every owner, shipper, consignee, or other person in charge of fruits, vegetables, or nursery stock, and the owner, lessee, or occupant of horticultural premises, to use sufficient methods of prevention to keep said properties free from infection by pests or disease. In event any of said properties become infected it is the duty of said persons to use effective methods to control or destroy the infection by disinfection as in this chapter defined. All fruits, vegetables and nursery stock which cannot be successfully disinfected shall be promptly destroyed.

In counties where black stem rust infection occurs every owner or person in charge of premises on which barberry bushes of the rust-producing varieties are growing shall forthwith destroy such bushes.

Within forty-eight hours after removal of any cuttings or prunings from bacterially infected trees or plants infected with fruit tree leaf roller egg clusters the person removing same shall disinfect or destroy them by burning or scorching. [1961 c 11 § 15.08.030. Prior: (i) 1927 c 311 § 3; 1923 c 37 § 2; 1915 c 166 § 4; RRS § 2842. (ii) 1921 c 141 § 8; 1915 c 166 § 18; RRS § 2856.]

15.08.040 Authority to enter premises—Interference unlawful. The director, supervisor and horticultural inspectors are authorized to at any time enter horticultural premises and any structure where fruit, vegetables, nursery stock, or horticultural products are grown or situated for any purpose, to inspect the same for infection.

No person shall hinder or interfere with any such officer in entering or inspecting or performing any duty imposed upon him. [1961 c 11 § 15.08.040. Prior: 1915 c 166 § 9; RRS § 2847.]

15.08.050 Condemnation of infected property—Disposal of, unlawful. If the premises or property inspected is found to be infected the inspecting officer shall condemn the same and serve upon the owner or person in charge thereof a written notice of the condemnation, describing the premises or property with reasonable certainty, and ordering the infected portion to be disinfected, or to be destroyed if incapable of disinfection, within a time and in a manner stated therein, and

giving notice that if the order is not complied with in the time stated, the officer will disinfect or destroy the property and charge the expense thereof to the owner or against the premises.

No person shall ship, sell, or otherwise dispose of or part with possession of, or transport, any such condemned property until all requirements of said notice and order are complied with and written permit of the inspector so to do is issued. [1961 c 11 § 15.08.050. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.060 Condemnation of infected property—Notice to owner—Division into classes. Said notice of condemnation shall also grant permission to the owner or person in charge of infected fruit, vegetables, or nursery stock to divide the same into classes:

- (1) The portion not infected;
- (2) the infected portion which is capable of successful disinfection; and
- (3) the infected portion which is incapable of successful disinfection and must be destroyed.

Said notice shall require the owner or person to disinfect class (2) and destroy class (3) within the time stated. [1961 c 11 § 15.08.060. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.070 Condemnation of infected property—Use of condemned fruit, vegetables—Permit. In the case of fruit or vegetables which cannot be successfully disinfected the inspector may grant to the owner or person in charge thereof a written permit to use the condemned products for stock feed, or manufacture the same into byproducts, or ship them to a byproduct factory; and it is unlawful for the person receiving such permit to sell or dispose of such products without first having the same manufactured into a byproduct or shipped to a byproduct factory, or to divert any such shipment when made, or for the consignee of such shipment to sell or dispose of the same until it is manufactured into a byproduct. [1961 c 11 § 15.08.070. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.080 Condemnation of infected property—Service of notice—Personal, constructive, substituted. Personal service of said notice shall be made upon the person in possession or in charge of said premises or property if possible. If such person is not the owner, or personal service cannot be made on such person, then a copy of the notice shall be mailed or telegraphed to the owner at his home or post office address if known or can with reasonable diligence be ascertained. If personal service cannot be made upon any person in possession or charge of the premises or property and the name and address of the owner thereof are not known or cannot be so ascertained, then the notice shall be served by posting

the same in some conspicuous place on the premises where the property to be disinfected or destroyed is situated, which service by posting shall be construed to be constructive personal service upon such owner. If the name and address of the owner are not known or cannot be so ascertained, service upon the person in possession or charge of the premises or property shall constitute substituted personal service upon the owner, in the absence of fraud or gross neglect. [1961 c 11 § 15.08.080. Prior: 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part.]

15.08.090 Condemnation of infected property—Duty to comply—Inspector's duty on failure—Lien for costs. Except as hereinabove provided, upon service of said notice the owner or person in possession or charge of the premises or property shall comply with its terms within the time specified. In case of their failure so to do, the inspector may enter the premises and perform or cause to be performed the services required in the notice. He shall keep an accurate account of the expense of performing said services, which shall become a lien on the premises or property which may be foreclosed in the manner herein provided. The lien on personal property shall have preference over all other liens.

If the inspector has not disinfected or destroyed the property it may be declared a nuisance as herein provided and treated as such. [1961 c 11 § 15.08.090. Prior: (i) 1943 c 150 § 4, part; 1929 c 150 § 1, part; 1925 ex.s. c 108 § 1, part; 1919 c 195 § 2 1/2, part; 1915 c 166 § 10, part; Rem. Supp. 1943 § 2848, part. (ii) 1943 c 150 § 5; 1935 c 168 § 4; 1931 c 27 § 2; 1927 c 311 § 4; 1915 c 166 § 11; Rem. Supp. 1943 § 2849.]

15.08.100 Foreclosure of lien—Sale—Notice of impounding—Contents. The officer disinfecting personal property may enforce the lien thereon provided for in RCW 15.08.090 by impounding and selling the property. He shall give notice of the impounding and proposed sale by posting a written notice in a conspicuous place upon the premises where the property is impounded and serve said notice upon the owner or person in charge of the property in the manner provided for service of notice to disinfect in RCW 15.08.080. Said notice shall state that the property, describing it with reasonable certainty, has been impounded, where it is situated, the amount of costs and expenses charged against it, and that unless same are paid within a specified time the property will be sold to satisfy said charges, accrued transportation and storage charges, if any, and costs of sale. Said specified time shall not be less than ten days after giving of the notice, except that immediate sale may be made of perishable fruits or vegetables. [1961 c 11 § 15.08.100. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.110 Sale proceeds—Deficiency—Action to recover. Such sales may be either at public auction or private sale, whichever, in the sound discretion of the officer, will be to the best interests of the state and

owner of the property. The proceeds thereof shall be applied to payment of: First, costs of sale; second, expenses of disinfection; third, accrued transportation and storage charges. The balance, if any, shall be paid to the owner.

Should such proceeds be insufficient to pay the costs of sale and expenses of disinfection, the deficiency may be recovered from the owner or person in charge in an action brought in the name of the state on the relation of the director by the prosecuting attorney of the county when directed to do so by the attorney general. [1961 c 11 § 15.08.110. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.120 Record of proceedings—Verified copy as evidence. The inspector shall make and sign a record of the proceedings, stating the name of the owner or reputed owner of the property, if known; location of the property, date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; the cost thereof in detail; date and manner of giving notice of impounding and sale; date, place, and manner of sale; name of the purchaser; and amount of the proceeds and disposition thereof.

Upon demand of the owner or person in charge of the property, the inspector shall furnish him with a verified copy of the record, and tender him the balance of the proceeds. If no demand is made within thirty days of the sale, or if the tender is refused, the inspector shall file a verified copy of the record with and remit any balance of the proceeds to the director, and if it is not claimed by the owner within six months, it shall be deposited in the state treasury.

The record or a verified copy thereof shall be admissible in evidence as prima facie evidence of the truth of its contents. [1961 c 11 § 15.08.120. Prior: 1915 c 166 § 12, part; RRS § 2850, part.]

15.08.130 Record of premises disinfected—Costs—Lien. The inspector disinfecting any horticultural premises shall make and sign a detailed record of the proceedings, stating the legal description of the premises; give the name of the owner or reputed owner; the date of inspection and the results thereof; date and manner of giving notice to disinfect; failure to disinfect; disinfection by the inspector; and the cost thereof in detail. If the cost is not paid within five days from the completion of the disinfecting, the inspector shall file with the auditor of the county in which the premises are situated two verified copies of the above record, and a claim of lien against the premises for the amount of the costs and therein refer to the record, which the auditor shall record as other lien claims. The auditor shall charge the same fees as are charged for filing and recording other liens. [1961 c 11 § 15.08.130. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.140 Hearing on costs—Notice—Service. The county auditor shall forthwith issue warrants in

payment of the labor employed in the work, and thereupon the county shall be subrogated to all rights of the laborers so paid. He shall fix the day for hearing on the record before the county commissioners, which shall be not less than twenty days from the date of filing. He shall prepare a notice directed to the owner or reputed owner of the premises of the filing of the record and claim and the hearing thereon, the time and place of the hearing and the amount of the claim. The sheriff shall serve the notice in the manner provided for service of the notice to disinfect, and file with the auditor before the hearing, his return of service and the amount of his fees, which shall be the same as for service of summons in civil proceedings. [1961 c 11 § 15.08.140. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.150 Payment and release—Order on amount—Priority of lien. If before or at the hearing the amount of the claim and the auditor's and sheriff's fees are paid to the county treasurer, he shall deliver to the auditor a duplicate receipt of the payment and the auditor shall cancel the lien and notify the county commissioners thereof. The treasurer shall pay the funds to the persons entitled thereto as appears from the records in the auditor's office.

If payment is not made, the auditor shall present to the board of county commissioners a verified copy of the record and claim, which shall be accepted in any proceeding as prima facie evidence of the truth of the contents thereof. The board shall receive and consider the record and claim and all sworn testimony offered, and shall enter an order fixing the amount of the claim and costs, and direct the amount paid from the current expense fund, and the auditor shall draw warrants therefor. The auditor shall record the order in his office as other lien claims and it shall be a lien against the premises in favor of the county, and shall bear interest at six percent per year from the date of the order. [1961 c 11 § 15.08.150. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.160 Payment date—Cancellation of lien. The lien and interest may be paid on or before the first Monday in October following the entry of the order, upon presenting to the treasurer, a statement from the auditor showing the amount due. Upon payment the treasurer shall stamp the statement and file it in his records, and shall issue a receipt to the person making the payment, showing payment and shall deliver a duplicate to the auditor, who shall then cancel the lien. [1961 c 11 § 15.08.160. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.170 Failure to pay—Conversion into taxes—Use. If the lien and interest are not paid on or before such first Monday in October the commissioners, when levying taxes for the ensuing year, shall also levy on the premises covered by the lien, a tax for the amount of the lien and interest, together with a penalty of six percent, which tax shall be collected as other taxes for

current expenses. The auditor shall then cancel the lien and note thereon that the amount thereof has been charged against the premises as taxes.

The tax shall be credited to the current expense fund and used to defray the expense of horticultural inspection and disinfection in the county, whether or not such expenditure has been included in the estimates made in the current county budget. [1961 c 11 § 15.08.170. Prior: 1927 c 311 § 5, part; 1921 c 141 § 5, part; 1915 c 166 § 14, part; RRS § 2852, part.]

15.08.180 Inspection board—Creation—Duties—Powers. If a horticultural inspector finds premises or property infested, he shall make a written report thereof to the inspector-at-large in his district stating the disease or infestation found, the estimated extent thereof, and whether in his opinion it is or will become a nuisance. Upon receipt of the report the inspector-at-large shall appoint a person residing within three miles of the said premises or property and who is a grower of horticultural products which could be infested from said premises or property, and who, with the inspector-at-large or someone delegated by him from his department, shall appoint a third person likewise a grower of agricultural products which could be so infested. Said three persons shall constitute an inspection board whose duty shall be to forthwith examine the infested premises or property so as to determine whether same or any part thereof is infested with any pest or disease named in RCW 15.08.010.

The board members shall have the same power of entry and inspection as the director, supervisor or horticultural inspector and shall be compensated at the rate of four dollars per day to be paid from the county current expense budget for horticulture. [1961 c 11 § 15.08.180. Prior: (i) 1941 c 20 § 5; 1915 c 166 § 6; Rem. Supp. 1941 § 2849-1e. (ii) 1941 c 20 § 7, part; Rem. Supp. 1941 § 2849-1g, part.]

15.08.190 Report of inspection—Nuisance abatement. Said board shall make a written report to the inspector-at-large of its findings, signed under oath by a majority of its members and stating:

(1) Whether said premises or a part thereof are infested,

(2) if infested, the nature and extent of infestation, and

(3) whether the infestation constitutes a nuisance. If the report shows the premises infested and constituting a nuisance, it and the findings of the inspector, shall be transmitted forthwith to the prosecuting attorney of the county. Within five days the prosecuting attorney shall file in the superior court a petition, signed and verified by him, describing the premises or property, giving the names of the owners, encumbrancers and other persons interested therein, as ascertained from the county records, containing a recital of the proceedings taken under RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180, and praying for an order declaring the premises or property to be a nuisance. Said report of the inspection board shall be attached to the

petition as an exhibit and made a part thereof. [1961 c 11 § 15.08.190. Prior: 1941 c 20 §§ 6, 7, part, 8; Rem. Supp. §§ 2849-1f, 2849-1g, part, 2849-1h.]

15.08.200 Notice of hearing—Service—Adjournments. A notice containing a description of the premises, stating the objects and purposes of the petition and the time and place of presentation of the petition to the court, shall be served upon every person named as interested in the premises at least five days prior to the time of presentation. Service of the notice shall be as nearly as possible in the manner provided by law for service of summons in a civil action, except that if service is had by publication the period of publication shall be two weekly publications in a newspaper published or of general circulation in the county, and the service shall be deemed completed on the expiration of fifteen days after the date of the first publication.

Proof of service may be made by affidavit of the person serving or publishing the notice and shall be filed with the clerk of the court on or before the time of presentation of the petition.

On application of any party or its own motion the court may adjourn the hearing from time to time, and may order new or further notice to be given any person whose interest may be affected. [1961 c 11 § 15.08.200. Prior: (i) 1941 c 20 § 9; 1937 c 71 § 2; Rem. Supp. § 2849-2. (ii) 1937 c 71 § 3; RRS § 2849-3.]

15.08.210 Order of abatement. At the hearing there must be competent proof that all parties interested in the premises or property have been duly served with said notice, and that the procedure prescribed in RCW 15.08.050, 15.08.060, 15.08.070, 15.08.080, 15.08.090, and 15.08.180 has been duly followed. The report of the inspection board shall be prima facie evidence that the premises are infested and constitute a nuisance. If there is no showing that said board acted in a capricious, arbitrary or unfair manner, the court shall accept the recommendation of said board and forthwith decree the plants, produce or property on the premises to constitute a nuisance and order the inspector-at-large of the district and the county commissioners to destroy the same, or abate the nuisance in such other manner as the court may direct.

The costs of destruction or abatement, and of the proceedings shall be taxed against the defendants therein. [1961 c 11 § 15.08.210. Prior: (i) 1941 c 20 § 10; Rem. Supp. 1941 § 2849-2a. (ii) 1937 c 71 § 4; RRS § 2849-4.]

15.08.220 Appeals—Bond for damages. An appeal may be taken from the decree by filing notice thereof not later than ten days after issuance of the decree. The appellant shall be required to file an appeal bond of not less than one thousand dollars and sufficient in amount to cover possible damages to neighboring properties due to delay in carrying out the decree. [1961 c 11 § 15.08.220. Prior: 1941 c 20 §§ 11, 12; Rem. Supp. 1941 §§ 2849-2b, 2849-2c.]

15.08.230 Disinfection of public properties. The director may require the governing body of counties, cities, towns and irrigation and school districts or other political subdivisions of the state to disinfect or destroy all infected trees, shrubs, or other nursery stock growing upon public property within their respective jurisdictions, or the director may disinfect or destroy such infected trees, shrubs, or other nursery stock. [1981 c 296 § 6; 1961 c 11 § 15.08.230. Prior: 1915 c 166 § 19; RRS § 2857.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.08.240 Dumping infected products, containers, prohibited. It shall be unlawful for a property owner or lessee to permit the piling or dumping, or for a person to pile or dump, any infected product on any property or to pile or dump infected containers where the dumping of the infected products or containers might constitute a source of infestation to horticultural products. [1961 c 11 § 15.08.240. Prior: 1943 c 150 § 6; 1941 c 20 § 14; Rem. Supp. 1943 § 2849-2e.]

15.08.250 Host-free districts—Director's duties. Whenever the director determines that a particular pest cannot be eradicated or effectively controlled by ordinary means, or that it is impractical to eradicate or control it without the destruction in whole or in part of uninfected host plants, he may issue a proclamation setting out the host-free period or host-free district, or both, describing the host plant and the district wherein planting, growing, cultivating, or maintenance in any manner of any plants or products capable of continuing the particular pests is prohibited during a specified period of time and until the menace therefrom no longer exists. [1961 c 11 § 15.08.250. Prior: 1941 c 20 § 13; Rem. Supp. 1941 § 2849-2d.]

15.08.260 Horticultural tax. At the time of making the regular annual tax levy the board of county commissioners of each county shall include a tax, to be known as the "horticultural tax," upon the taxable property of the county in an amount sufficient to meet the expense of inspecting and disinfecting nursery stock, fruits, vegetables, horticultural or agricultural products, and horticultural premises under the provisions of this title. Said tax shall be levied and collected in the same manner as are general taxes and when collected shall be placed in the county current expense fund. [1961 c 11 § 15.08.260. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

15.08.270 Basis for estimating the tax. In estimating the amount to be levied for said horticultural tax the board shall take into consideration the expense of such inspection and disinfection for the ensuing year, and the amount which will be collected under the provisions of this chapter on properties disinfected. [1961 c 11 § 15.08.270. Prior: 1919 c 195 § 3, part; 1915 c 166 § 13, part; RRS § 2851, part.]

Chapter 15.09

HORTICULTURAL PEST AND DISEASE BOARD

Sections

15.09.010	Purpose.
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15.09.030	Members—Appointment—Terms.
15.09.040	Meeting—Quorum—Officers.
15.09.050	Powers and duties.
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15.09.070	Right of entry—Search warrant.
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15.09.110	Refund of charges paid.
15.09.120	Disposition of moneys collected.
15.09.130	Operating moneys.
15.09.140	Abolishment of board.
15.09.900	Chapter cumulative.

15.09.010 Purpose. The purpose of this chapter is to enable counties to more effectively control and prevent the spread of horticultural pests and diseases. [1969 c 113 § 1.]

15.09.020 Creation of board. Either upon receiving a petition filed by twenty-five landowners within the county or on its own motion, the board of county commissioners in order to achieve the purposes of this chapter may, following a hearing, create a horticultural pest and disease board. [1969 c 113 § 2.]

15.09.030 Members—Appointment—Terms. Each horticultural pest and disease board shall be comprised of five voting members, four of whom shall be appointed by the board of county commissioners and one of whom shall be the inspector at large for the horticultural district in which the county is located. In addition, the chief county extension agent, or a county extension agent appointed by the chief agent, shall be a nonvoting member of the board.

Of the four members appointed by the board of county commissioners, one of such members shall have at least a practical knowledge of horticultural pests and diseases, and the other members shall be residents of the county, shall own land within the county and shall be engaged in the primary and commercial production of a horticultural product or products. Such appointed members shall serve a term of two years and shall serve without salary. [1969 c 113 § 3.]

15.09.040 Meeting—Quorum—Officers. Within thirty days after the appointed seats on the horticultural pest and disease board have been filled, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairman and such other officers as may be necessary. [1969 c 113 § 4.]

15.09.050 Powers and duties. Each horticultural pest and disease board shall have the following powers and duties:

(1) To receive complaints concerning the infection of horticultural pests and diseases on any parcel of land within the county;

(2) To inspect or cause to be inspected any parcel of land within the county for the purpose of ascertaining the presence of horticultural pests and diseases as provided by RCW 15.09.070;

(3) To order any landowner to control and prevent the spread of horticultural pests and diseases from his property, as provided by RCW 15.09.080;

(4) To control and prevent the spread of horticultural pests and diseases on any property within the county as provided by RCW 15.09.080, and to charge the owner for the expense of such work in accordance with RCW 15.09.080 and 15.09.090;

(5) To employ such persons and purchase such goods and machinery as the board of county commissioners may provide;

(6) To adopt, following a hearing, such rules and regulations as may be necessary for the administration of this chapter. [1969 c 113 § 5.]

15.09.060 Owner's duty to control pests and diseases. Each owner of land containing any plant or plants shall perform or cause to be performed such acts as may be necessary to control and to prevent the spread of horticultural pests and diseases, as such pests and diseases are defined under RCW 15.08.010, as now or hereafter amended, or as such pests and diseases are defined by the director of the department of agriculture in accordance with the purpose of this chapter and with the provisions of the Administrative Procedure Act, chapter 34.04 RCW. The word "owner" as used in this section shall mean the possessor or possessors of any form of legal or equitable title to land and entitlement to possession. For purposes of liability under this chapter, the owners of land shall be jointly and severally liable. [1969 c 113 § 6.]

15.09.070 Right of entry—Search warrant. Any authorized agent or employee of the county horticultural pest and disease board may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens, general inspection, and the performance of such acts as are necessary for controlling and preventing the spreading of horticultural pests and diseases. Such entry may be without the consent of the owner, and no action for trespass or damages shall lie so long as such entry and any activities connected therewith are undertaken and prosecuted with reasonable care.

Should any such employee or authorized agent of the county horticultural pest and disease board be denied access to such property where such access was sought to carry out the purpose and provisions of this chapter, the said board may apply to any court of competent jurisdiction for a search warrant authorizing access to such

property for said purpose. The court may upon such application issue the search warrant for the purpose requested. [1969 c 113 § 7.]

15.09.080 Notice and order to control pests and diseases—Authority of board to perform control measures—Expenses charged to owner. (1) Whenever the horticultural pest and disease control board finds that an owner of land has failed to control and prevent the spread of horticultural pests and diseases on his land, as is his duty under RCW 15.09.060, it shall provide such person with written notice, which notice shall identify the pests and diseases found to be present and shall order prompt control or disinfection action to be taken within a specified and reasonable time period.

(2) If the person to whom the notice is directed fails to take action in accordance with this notice, then the board shall perform or cause to be performed such measures as are necessary to control and prevent the spread of the pests and diseases on such property and the expense of this work shall be charged to such person. [1982 c 153 § 4; 1969 c 113 § 8.]

Severability—Effective date—1982 c 153: See notes following RCW 17.24.200.

15.09.090 Hearing on liability of owner for costs or charges—Review. Any person upon request and pursuant to the rules and regulations of the horticultural pest and disease board shall be entitled to a hearing before the board on any charge or cost for which such person is alleged to be liable under subsection (2) of RCW 15.09.080. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court of the county where the property is situated and to any damages suffered on account of disinfection work wrongfully undertaken, but no stay or injunction shall lie to delay any such disinfection work subsequent to notice given pursuant to RCW 15.09.080. [1969 c 113 § 9.]

15.09.100 Payment of expenses and costs—Penalty—Collection. Any amount charged to the owner of land in accordance with the provisions of RCW 15.09.080 and 15.09.090 shall be paid by such owner within sixty days of the date in which he was billed for such amount. If payment is not made within such sixty day period, the amount of such charge, together with a ten percent penalty surcharge, shall, for purposes of collection, become a tax lien under RCW 84.60.010, as now or hereafter amended, and shall be promptly collected as such by the county treasurer: *Provided*, That where good cause is shown the board may extend for an additional two months the time period during which payment shall be made. [1969 c 113 § 10.]

15.09.110 Refund of charges paid. In regard to any charge made pursuant to RCW 15.09.080, if either the horticultural pest and disease board or the superior court on judicial review disallows such charge, then any amount paid on such charge, together with any interest or penalty, shall be promptly refunded by the county

from the county's current expense fund or from any other county funds available. In addition, the county shall pay six percent simple annual interest on such amount refunded. [1969 c 113 § 11.]

15.09.120 Disposition of moneys collected. Any moneys collected under this chapter shall be placed in the county current expense fund together with any taxes collected pursuant to the provisions of RCW 15.08.260, as now or hereafter amended. [1969 c 113 § 12.]

15.09.130 Operating moneys. Sufficient operating moneys for the horticultural pest and disease board shall be provided for pursuant to the provisions of RCW 15.08.260 and 15.08.270, as now or hereafter amended. [1969 c 113 § 13.]

15.09.140 Abolishment of board. Upon receipt of a petition signed by twenty-five landowners within the county or on its own motion, the board of county commissioners may abolish the pest and disease board following a hearing and a finding that the purposes of this chapter would not be sufficiently served by the continued existence of such board. [1969 c 113 § 14.]

15.09.900 Chapter cumulative. The effects of the provisions of this chapter on the provisions of chapter 15.08 RCW shall be cumulative. [1969 c 113 § 15.]

Chapter 15.13

HORTICULTURAL PLANTS AND FACILITIES— INSPECTION AND LICENSING

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 15.13.950 Effective date—1971 ex.s. c 33.

Prior law: 1961 c 11 §§ 15.12.010 through 15.12.110; 1961 c 221 §§ 1 through 23 (codified as RCW 15.13.010 through 15.13.210, 15.13.900, and 15.13.910).

Imported seeds, nursery stock, fruit, vegetables, markings on packaging: RCW 17.24.060.

Liens for improving property with nursery stock: Chapter 60.20 RCW.

15.13.250 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, and viticultural plant, for planting, propagation or ornamentation growing or otherwise. The term does not apply to cut plant material or to olericultural plants.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants are grown, stored, handled or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants.

(6) "Plant pests" means, but is not limited to any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants, weeds, or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

(7) "Inspection and/or certification" means, but is not limited to, the inspection of any horticultural plants at any time prior to, during, or subsequent to harvest, or sale, by the director, and the issuance by him of a written certificate stating the grades, classifications, and if such horticultural plants are free of plant pests and in compliance with all the provisions of this chapter and rules adopted hereunder.

(8) "Nursery dealer" means any person who sells, holds for sale, or offers for sale, or plants, grows, receives, or handles horticultural plants, including turf for sale or for planting, including lawns, for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(10) "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. [1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

Severability—1982 c 182: See RCW 19.02.901.

15.13.260 Enforcement—Rules and regulations—Scope. The director shall enforce the provisions of this chapter and he may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing grades and/or classifications for any horticultural plant and standards for such grades and/or classifications.

(2) The director may adopt rules for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from plant pests.

(3) The director shall adopt rules establishing fees for inspection of horticultural plants and methods of collection thereof.

(4) The director shall when adopting rules or regulations under the provisions of this chapter, hold a public hearing and satisfy all the requirements of chapter 34.04 RCW (administrative procedure act) as enacted or hereafter amended, concerning the adoption of rules and regulations. [1985 c 36 § 2; 1971 ex.s. c 33 § 2.]

15.13.270 Licensing exemptions—Permits for clubs, nonprofit associations, educational organizations—Fee. The provisions of this chapter relating to licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants as defined in RCW 15.13.250 and which are grown by or donated to its members; (3) educational organizations associated with private or public secondary schools. However, such a club, association, or organization shall apply to the director for a permit to conduct such sales. A two dollar fee shall be assessed for the permit.

All horticultural plants sold under such a permit issued by the director shall be subject to all the other provisions of this chapter except licensing as set forth herein. [1985 c 36 § 3; 1983 1st ex.s. c 73 § 2; 1971 ex.s. c 33 § 3.]

15.13.280 Nursery dealer licenses—Application—Fees—Expiration—Posting—Audit. (1) No person shall act as a nursery dealer without a license for each place of business where horticultural plants are sold except as provided in RCW 15.13.270. Any person applying for such a license shall apply through the master license system. The application shall be accompanied by a fee established by the director by rule. The director shall establish by rule, in accordance with chapter 34.04 RCW, a schedule of fees for retail nursery

dealer licenses and a schedule of fees for wholesale nursery dealer licenses which shall be based upon the amount of a person's retail or wholesale sales of horticultural plants and turf. The schedule for retail licenses shall include, but shall not be limited to, separate fees for at least the following two categories: (a) A fee for a person whose gross business sales of such materials do not exceed two thousand five hundred dollars; and (b) a fee for a person whose gross business sales of such materials exceed two thousand five hundred dollars.

(2) Except as provided in RCW 15.13.270, a person conducting both retail and wholesale sales of horticultural plants at a place of business shall secure for the place of business (a) a retail nursery dealer license if retail sales of the plants and turf exceed such wholesale sales, or (b) a wholesale nursery dealer license if wholesale sales of the plants and turf exceed such retail sales.

(3) The licensing fee that must accompany an application for a new license shall be based upon the estimated gross business sales of horticultural plants and turf for the ensuing licensing year. The fee for renewing a license shall be based upon the licensee's gross sales of such products during the preceding licensing year.

(4) The license shall expire on the master license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license shall be posted in a conspicuous place open to the public in the location for which it was issued.

(5) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [1987 c 35 § 1; 1985 c 36 § 4; 1983 1st ex.s. c 73 § 3; 1982 c 182 § 20; 1971 ex.s. c 33 § 4.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

expiration date: RCW 19.02.090.

system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: RCW 15.13.250(10).

to include additional licenses: RCW 19.02.110.

15.13.290 Nursery dealer licenses—Additional charge for late renewal. If any application for renewal of nursery dealer license is not filed prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 21; 1971 ex.s. c 33 § 5.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

15.13.300 Nursery dealer licenses—Application—Contents. Application for a license shall be made through the master license system and shall include:

(1) The full name of the person applying for such license and if the 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 in the application.

(2) The principal business address of the applicant in the state and elsewhere.

(3) The address for the location or locations for which the licenses are being applied.

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

(5) Any other necessary information prescribed by the director. [1982 c 182 § 22; 1971 ex.s. c 33 § 6.]

Severability—1982 c 182: See RCW 19.02.901.

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: Chapter 19.02 RCW.

15.13.310 Assessment on gross sale price of wholesale market value of fruit trees, seedlings and rootstock—Method for determining—Due date—Gross sale period—Audit. (1) There is hereby levied an annual assessment on the gross sale price of the wholesale market value for all fruit trees, fruit tree seedlings, fruit tree rootstock, and all other rootstock used for fruit tree propagation produced in Washington, and sold within the state or shipped from the state of Washington by any licensed nursery dealer during any license period, as set forth in this chapter. The director shall by rule subsequent to a hearing determine the rate of an assessment conforming with the costs necessary to carry out the fruit tree certification and nursery improvement programs specified in RCW 15.13.470.

Such wholesale market price may be determined by the wholesale catalogue price of the seller of such fruit trees, fruit tree seedlings, or fruit tree rootstock or of the shipper moving such fruit trees, fruit tree seedlings, or fruit tree rootstock out of the state. If the seller or shipper do not have a catalogue, then such wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining such average wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) Such assessment shall be due and payable on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous license period.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid. [1987 c 35 § 2; 1983 1st ex.s. c 73 § 4; 1971 ex.s. c 33 § 7.]

15.13.320 Advisory committee—Appointment—Terms—Filling vacancies. An advisory committee is hereby established to advise the director in the administration of the fruit tree certification and nursery improvement program.

(1) The committee shall consist of five fruit tree nurserymen and the director or his designated appointee.

(2) The director shall appoint this committee from names submitted by the Washington state nurserymen's association.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates his position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments. [1983 1st ex.s. c 73 § 5; 1971 ex.s. c 33 § 8.]

15.13.335 Advisory committee—Members—

Terms. An advisory committee is hereby established to advise the director in the administration of this chapter.

(1) The committee shall consist of the following members: The president, or an appointee designated by the president, of (a) the Washington state floricultural association, (b) the Washington state bulb association, and (c) the Washington state nursery association; and the director or his designated appointee.

(2) The terms of the members of the committee shall be the same as the terms of the officers for the association set forth in subsection (1) of this section. [1983 1st ex.s. c 73 § 6.]

15.13.340 Collection charge on delinquent assessments. (1) There is hereby levied on all delinquent and unpaid assessments a collection charge of twenty percent of the amount due and to be added thereto for each license period such assessment is delinquent.

(2) The director shall not issue a nursery dealer license to any applicant who has failed to pay any assessment due under the provisions of this chapter. [1971 ex.s. c 33 § 10.]

15.13.350 Denial, suspension, revocation of license—Grounds. The director may, whenever he determines that an applicant or licensee has violated any provisions of this chapter, and complying with the notice and hearing requirement and all other provisions of chapter 34.04 RCW, as enacted or hereafter amended, concerning contested cases, deny, suspend or revoke any license issued or which may be issued under the provisions of this chapter. [1971 ex.s. c 33 § 11.]

15.13.360 Hearings—Subpoenas—Witnesses, fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records in any hearing in the county where the person licensed under this chapter resides affecting the authority or privilege granted by a license issued under the provisions of this chapter. Witnesses except complaining witnesses, shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1971 ex.s. c 33 § 12.]

15.13.370 Request for inspector's services during shipping season—Costs—Certificate of inspection.

Any person licensed under the provisions of this chapter may request, upon the payment of actual costs to the department as prescribed by the director, the services of a horticultural inspector at such licensee's place of business or point of shipment during the shipping season. Subsequent to inspection such horticultural inspector shall issue to such licensee a certificate of inspection in triplicate signed by him covering any horticultural plants which he finds not to be infected with plant pests and in compliance with the provisions of this chapter and rules adopted hereunder. [1971 ex.s. c 33 § 13.]

15.13.380 Inspection and certification fees—Director to prescribe—When due and payable—Arrears.

The director shall prescribe, in addition to those costs provided for in RCW 15.13.370, any other necessary fees to be charged the owner or his agent for the inspection and certification of any horticultural plant subject to the provisions of this chapter or rules adopted hereunder, and for the inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants which are, or are not subject to the provisions of this chapter or rules adopted hereunder, produced in or imported into this state. The inspection fees provided for in this chapter shall become due and payable by the end of the next business day and if such are not paid within the prescribed time, the director may withdraw inspection or refuse to perform any inspection or certification service for the person in arrears: *Provided*, That in such instances the director may demand and collect inspection and certification fees prior to inspecting and certifying any horticultural plants for such person. [1971 ex.s. c 33 § 14.]

15.13.390 Unlawful selling, shipment or transport of plants within state, when. It shall be unlawful for any person to sell, ship or transport any horticultural plant in this state unless it is apparently free from plant pests. No person shall sell, ship or transport any horticultural plant in this state unless it meets the requirements of this chapter or rules adopted hereunder. [1971 ex.s. c 33 § 15.]

15.13.400 Unlawful shipment or delivery of plants into state, when—Certificate and inspection requirements.

(1) It shall be unlawful for any person to ship or deliver any horticultural plant into this state unless such horticultural plant is accompanied by an inspection certificate from the state or country of origin stating that such horticultural plant is apparently free of plant pests and in conformance with not less than the minimal requirements of this chapter or rules adopted hereunder. The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director in Olympia, Washington, on or before the date such horticultural plants enter into the state of Washington.

(2) The director may by rule require that any or all such horticultural plants delivered or shipped into the

state be inspected for conformance with the requirements of this chapter and rules adopted hereunder, prior to release by the person delivering or transporting such horticultural plants into this state even though accompanied by acceptable inspection certificates issued by the state or country of origin. [1971 ex.s. c 33 § 16.]

15.13.410 Shipments into state to be marked or tagged—Contents. Each shipment of horticultural plants transported or shipped into the state and/or offered for retail sale within the state shall be legibly marked or tagged in a conspicuous manner, and shall include the following:

- (1) The kind of horticultural plant(s).
- (2) When plants, other than floricultural products are on display for retail sale, one plant per block shall be tagged as prescribed above. On mixed lots or blocks, each plant shall be tagged as prescribed above.
- (3) Any other necessary information prescribed, by rule, by the director. The director may, whenever he finds that any horticultural plant is not properly marked, order it off sale until it is properly marked, or order that it be returned to the consignor for proper marking. [1971 ex.s. c 33 § 17.]

15.13.420 Unlawful acts enumerated—Certain persons exempted from penalty for false advertising. It shall be unlawful for any person:

- (1) To falsely represent that he is the agent or representative of any nursery dealer in horticultural plants;
- (2) To deceive or defraud another in the sale of horticultural plants by substituting inferior or different grades from those ordered;
- (3) To bring into this state any horticultural plants infested with plant pests, or to sell, offer for sale, hold for sale, distribute, ship or deliver any horticultural plants infested with plant pests;
- (4) To sell, offer for sale, hold for sale, solicit orders for or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;
- (5) To advertise the price of horticultural plants without denoting the size of the plant material;
- (6) To make the following representations directly or indirectly, without limiting the effects of this section:
 - (a) That any horticultural plant has been propagated by grafting or budding methods, when such is not the fact;
 - (b) That any horticultural plant is healthy and will grow anywhere without the use of fertilizer, or will survive and produce without special care, when such is not a fact;
 - (c) That any horticultural plant blooms the year around, or will bear an extraordinary number of blooms of unusual size or quality, when such is not a fact;

(d) That any horticultural plant is a new variety, when in fact it is a standard variety to which the person who is selling or holding such horticultural plant for sale has given a new name;

(e) That any horticultural plant cannot be purchased through usual outlets, or that limited stocks are available, when such is not the fact;

(f) That any horticultural plant offered for sale will be delivered in time for the next, or any specified, seasonal planting when the seller is aware of factors which make such delivery improbable;

(g) That the appearance of any horticultural plant is normal or usual when the appearance so represented is in fact abnormal or unusual;

(h) That the root system of any horticultural plant is appreciably larger than that which actually exists, whether accomplished by means of packaging, balling or otherwise;

(i) That bulblets are bulbs;

(j) That any horticultural plant is rare or an unusual item, when such is not the fact;

(7) To sell, offer for sale or hold for sale, or plant for another person any horticultural plants on the basis of grade, unless such horticultural plants have been graded and/or classified and meet the standards prescribed by the director for such grades and/or classifications;

(8) To substitute any other horticultural plant for a horticultural plant covered by an inspection certificate;

(9) To sell, offer for sale, or hold for sale, or plant for another person, any horticultural plant which is dead, in a dying condition, seriously broken, frozen, or damaged, or abnormally potbound;

(10) To sell, offer for sale, or hold for sale, or plant for another person as other than collected horticultural plant any such collected horticultural plant within one year after its collection in its natural habitat unless it is conspicuously marked or labeled as a collected horticultural plant.

No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1971 ex.s. c 33 § 18.]

15.13.430 Hold order on infested or infested plants—Selling, offering to sell or moving unlawful. When the department has cause to believe that any horticultural plants are infested or infected by any plant pest, chemical or other damage, the director may issue a hold order on such horticulture plants. It shall be unlawful to sell, offer for sale, or move such plants until released in writing by the director. [1971 ex.s. c 33 § 19.]

15.13.440 Order of condemnation, when—Finality. The director shall condemn any or all horticultural plants in a shipment or when any such horticultural plants are held for sale, or offered for sale and they are found to be dead, in a dying condition, seriously broken, damaged or frozen or abnormally potbound and shall order such horticultural plants to be destroyed or returned at shipper's option. The director's order shall be final fifteen days after the date of issuance, unless within such time the superior court of the county where the condemnation occurred shall issue an order requiring the director to show cause why his order should not be stayed. [1971 ex.s. c 33 § 20.]

15.13.450 Injunction to prevent violations. The director may bring an action to enjoin the violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs, notwithstanding the existence of other remedies at law. [1971 ex.s. c 33 § 21.]

15.13.455 Injunction to restrain operation as nursery dealer without valid license—Costs, attorneys' fees, and expenses. (1) The director is hereby authorized to apply to the superior court of Thurston county for a prompt hearing on, and such court shall have jurisdiction upon, and for cause shown the court shall, without proof that an adequate remedy at law does not exist, grant, a temporary or permanent injunction restraining any person from operating as a nursery dealer without a valid license.

(2) An order restraining any person from operating as a nursery dealer without a valid license shall contain such provision for the payment of pertinent court costs and reasonable attorneys' fees and administrative expenses as is equitable and the court deems appropriate in the circumstances. [1983 1st ex.s. c 73 § 7.]

15.13.460 Prior rules adopted and continued. The repeal of RCW 15.13.010 through 15.13.210 and RCW 15.13.900 and 15.13.910 by section 30, chapter 33, Laws of 1971 ex. sess. (uncodified) and the enactment of the remaining sections of this chapter shall not be deemed to have repealed any rules adopted under the provisions of RCW 15.13.010 through 15.13.210 and RCW 15.13.900 and 15.13.910 and in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.04 RCW, concerning the adoption of rules, and any amendment or repeal of such rules after July 1, 1971, shall be subject to the provisions of chapter 34.04 RCW concerning the adoption of rules as enacted or hereafter amended. [1971 ex.s. c 33 § 24.]

15.13.470 Disposition of moneys collected under chapter—Expenditure. All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter and rules adopted under

this chapter. No appropriation is required for the disbursement of moneys from the account by the director. Any residual balance of funds remaining in the nursery inspection fund on July 26, 1987, shall be transferred to that account within the agricultural local fund: *Provided*, That all fees collected for fruit tree, fruit tree seedling and fruit tree rootstock assessments as set forth in this chapter shall be deposited in the northwest nursery fund to be used only for the Washington fruit tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW. For the purpose of testing and improvement of fruit trees, fruit tree seedlings, fruit tree rootstock, or other plant material used for the propagation of fruit trees, the director may, with advice from the advisory committee under RCW 15.13-.320, expend up to fifty percent of the money collected from assessments during each fiscal year ending June 30. At no time may such contribution allow the balance of the northwest nursery fund to fall below the combined program cost of the two previous fiscal years. The amount of this minimum balance shall be determined by the director on June 30 of each year. [1987 c 35 § 3; 1985 c 36 § 5; 1975 1st ex.s. c 257 § 1; 1971 ex.s. c 33 § 25.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.13.480 Cooperation, agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter. [1971 ex.s. c 33 § 26.]

15.13.490 Penalties—Subsequent offenses. (1) Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) In lieu of any other penalty imposed under this section, a person who acts as a nursery dealer without the license required by RCW 15.13.280 or the permit required by RCW 15.13.270 is subject to a civil penalty of up to two hundred dollars for each violation. The director may impose the penalty and the penalty shall be subject to appeal in accordance with chapter 34.04 RCW. Penalties collected under this subsection shall be deposited in the state general fund. [1985 c 36 § 6; 1971 ex.s. c 33 § 27.]

15.13.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1971 ex.s. c 33 § 22.]

15.13.930 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or

criminal, which shall already be in existence on July 1, 1971. [1971 ex.s. c 33 § 23.]

15.13.940 Severability—1971 ex.s. c 33. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 33 § 28.]

15.13.950 Effective date—1971 ex.s. c 33. This chapter shall take effect on July 1, 1971. [1971 ex.s. c 33 § 29.]

Chapter 15.14 PLANTING STOCK

Sections

15.14.010	Definitions.
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15.14.030	Rules—Scope.
15.14.040	Acquisition of property—Washington state crop improvement nurseries.
15.14.050	Foundation and breeder planting stock—Research—Availability to producers and commercial growers.
15.14.060	Surplus stock—Availability to produce certified or registered stock—Sale, conditions.
15.14.070	Certificates—Samples for checking, reports.
15.14.080	Planting stock areas—Establishment—Place—Notice and hearing.
15.14.100	Departmental fees.
15.14.110	Certification as foundation or breeder seed—Requirements for certification of propagators' plant materials.
15.14.120	Agreements with educational and governmental entities.
15.14.130	Deposit of funds in northwest nursery fund—Use.
15.14.140	Unlawful acts.
15.14.150	Injunctions.
15.14.900	Chapter cumulative and nonexclusive.
15.14.910	Other laws not affected.
15.14.920	Severability—1961 c 83.

15.14.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society and association and every officer, agent or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage to any plant or parts thereof, or any processed, manufactured, or other products of plants.

(5) "Plant propagating stock" hereinafter referred to as "planting stock" includes any propagating materials

used for the production or processing of horticultural, floricultural, viticultural or olercultural plants for the purpose of being sold, offered for sale or exposed for sale for planting or reproduction purposes: *Provided*, That it shall not include agricultural and vegetable seeds as defined in RCW 15.49.050 and 15.49.060.

(6) "Certified plant stock" means the progeny of foundation, registered or certified plant stock if designated foundation and plant propagating materials that are so handled as to maintain satisfactory genetic identity and purity and have met certification standards required by this chapter and have been approved and certified by the director.

(7) "Foundation planting stock" means plant stock propagating materials that are increased from breeder or designated plant stock and are so handled as to most nearly maintain specific genetic identity and purity. Foundation plant stock, established by designation shall be that plant stock so designated by the director.

(8) "Breeder planting stock" means plant propagating materials directly controlled by the originating or in certain cases the sponsoring plant breeder or institution, which may include the department and which provides the source of the foundation plant stock.

(9) "Registered planting stock" means the progeny of foundation or registered planting stock or plant propagating material that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the director. This class of planting stock shall be of a quality suitable for the production of certified planting stock. [1983 c 3 § 19; 1961 c 83 § 1.]

15.14.020 Certifying officer—Rules. The director is hereby designated the legal plant certifying officer for the state and he may adopt the rules necessary to carry out the purpose and provisions of this chapter. All such rules shall be adopted pursuant to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules. [1961 c 83 § 2.]

15.14.030 Rules—Scope. The director may adopt rules concerning but not limited to:

(1) The certification of planting stock as to variety, type, strain or other genetic character.

(2) The freedom of planting stock from infection by plant pests.

(3) Grades and classifications for the various varieties, types or strains of planting stock and standards and sizes for such grades and/or classifications.

(4) The labeling and identification of certified planting stock.

(5) The inspection of planting stock prior to planting, prior to and during harvest and subsequent to harvest. [1961 c 83 § 3.]

15.14.040 Acquisition of property—Washington state crop improvement nurseries. The director may acquire by purchase, gift, devise, lease or rental, real property and any other type property, including any equipment, products or planting stock necessary to carry

out the purpose of this chapter. Such real property shall be designated as Washington state crop improvement nurseries and may be located in remote or outlying areas where the breeder or foundation planting stock may be planted to better protect its genetic identity and freedom from plant pests. [1961 c 83 § 4.]

15.14.050 Foundation and breeder planting stock—Research—Availability to producers and commercial growers. The director may, for the purposes of maintaining and/or improving the genetic characteristics and freedom from plant pests of any foundation and breeder planting stock, make such foundation and breeder stock readily available to producers and commercial growers, acquire and plant such foundation and breeder planting stock for research and propagation. [1961 c 83 § 5.]

15.14.060 Surplus stock—Availability to produce certified or registered stock—Sale, conditions. The director shall make available to producers who desire to produce certified or registered planting stock for their own use or to commercial growers of certified or registered planting stock any or all surplus planting stock: *Provided*, That the director may retain a large enough supply of such foundation and breeder planting stock so as to maintain or improve its genetic characteristics and make future supplies of such foundation and breeder planting stock readily available to producers and commercial growers of certified and registered planting stock. The director may sell such foundation and breeder stock and shall sell it at its actual cost to the department, as determined by the director. A condition of the sale may be that the purchaser may only use such foundation and breeder planting stock for the purpose of producing certified or registered planting stock and that it may be inspected by the director whenever necessary during its growing period or at harvest time or subsequent to harvest for certification if it is found to meet the requirements of this chapter and rules adopted hereunder for certified or registered planting stock. [1961 c 83 § 6.]

15.14.070 Certificates—Samples for checking, reports. The director may, subject to rules adopted under the provisions of this chapter:

(1) Subsequent to inspection of certified or registered planting stock prior to planting and inspection during its growth and harvest and subsequent to harvest issue certificates stating that such planting stock is certified or registered planting stock.

(2) Take samples in reasonable amounts as necessary of planting stock certified or registered under the provisions of subsection (1) of this section for the purpose of checking and testing to see if such certified and registered planting stock is maintaining its genetic characteristics and freedom from plant pests. Such samples of certified or registered planting stock shall be planted and checked in Washington state crop improvement nurseries. Reports of the results of the test plantings shall be made available to the producers or commercial growers

of certified or registered planting stock forthwith. [1961 c 83 § 7.]

15.14.080 Planting stock areas—Establishment—Place—Notice and hearing. The director may, subsequent to obtaining real property in a remote area for the purpose of establishing a Washington state crop improvement nursery, establish a planting stock area for the purpose of maintaining genetic qualities of planting stock and their freedom from plant pests. Such a planting stock area may be established only in areas where no commercial production of the planting stock to be planted in such Washington state crop improvement nursery is planted. No planting stock area shall be established until the director has published in a newspaper of general circulation, his intent to establish such planting stock area in the county or counties where it is to be located, once each week for three successive weeks, and that a public hearing will be held, within ten days subsequent to the last publication of such notice, for the purpose of determining the feasibility of establishing such a planting stock area. Such hearings shall be subject in addition to the foregoing requirements, to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning contested cases. The director may in addition to the notice by publication use any other media to inform the public of his intent to establish a planting stock area. [1961 c 83 § 8.]

15.14.100 Departmental fees. The director shall by rule establish reasonable fees which may be charged by the department for the inspection, testing and certification of planting stock certified, registered, foundation or breeder planting stock. [1961 c 83 § 10.]

15.14.110 Certification as foundation or breeder seed—Requirements for certification of propagators' plant materials. The director may accept for certification as foundation or breeder seed any plant material grown or produced by Washington state university, the United States department of agriculture or propagators whose plant materials are produced in conformance with the requirements of this chapter and rules adopted hereunder. Such propagators' plant materials shall have been under the observation of the director for a period of not less than one year pursuant to periodic inspections by the director before he may certify them as foundation or breeder planting stock. [1961 c 83 § 11.]

15.14.120 Agreements with educational and governmental entities. The director may cooperate with and enter into agreements with Washington state university, experimental stations, governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter. [1961 c 83 § 12.]

15.14.130 Deposit of funds in northwest nursery fund—Use. All the moneys collected by the director under the provisions of this chapter shall be paid into the northwest nursery fund as created in RCW 15.69.020

and shall be used by the director only to carry out the provisions of this chapter. [1961 c 83 § 13.]

15.14.140 Unlawful acts. It shall be unlawful for any person to sell, offer for sale, hold for sale, label, identify, represent or to advertise any planting stock as being certified, registered, foundation or breeder planting stock unless it has been inspected by the director and he has issued a certificate stating that such planting stock has met the requirements of this chapter and rules adopted hereunder and that it is properly identified and labeled. [1961 c 83 § 14.]

15.14.150 Injunctions. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of Thurston county, notwithstanding the existence of other remedies at law. [1961 c 83 § 15.]

15.14.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1961 c 83 § 16.]

15.14.910 Other laws not affected. The enactment of *this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this act becomes effective. [1961 c 83 § 17.]

*Reviser's note: "this act" refers to 1961 c 83 which became effective at midnight June 7, 1961, see preface 1961 session laws.

15.14.920 Severability—1961 c 83. If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 83 § 18.]

Chapter 15.17

STANDARDS OF GRADES AND PACKS

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15.17.930	Effective date—1963 c 122.
15.17.940	Severability—1963 c 122.
15.17.950	Repealer.

Bread, weights and measures standards: RCW 19.92.100 through 19.92.120.

Grain and other commodities, standard grades: Chapter 22.09 RCW.

Hops, bale, tare: RCW 19.92.240.

Weights and measures, standards, packages, boxes, etc.: Chapter 19.94 RCW.

15.17.010 Purpose. The purpose of this chapter is to provide uniform grades and standards for horticultural plants and products and to provide for the inspection of such horticultural plants or products in the state of Washington. This chapter is important and vital to the maintenance of a high level of public health and welfare of the citizens of this state by protecting the national and international reputation of horticultural plants and products grown and shipped from this state and protecting the citizens of this state from the importation and sale of ungraded, immature, and inferior horticultural plants and products so as to prevent a condition conducive to substitution, confusion, deception, and fraud, a condition which if permitted to exist would tend to interfere with the orderly and fair marketing of horticultural plants and products essential to the well being of the citizens of this state. It is hereby declared that this chapter is enacted in the exercise of the police power of this state for the purpose of protecting the immediate and future health, safety, and general welfare of the citizens of this state. [1963 c 122 § 1.]

15.17.020 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Horticultural plant or product" includes, but is not limited to, any horticultural, floricultural, viticultural, and olericultural plant, growing or otherwise, and their products whether grown above or below the ground's surface.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants and products are grown, stored, handled, or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants or products.

(6) "Deceptive pack" means the pack of any container which has in the outer layer or any exposed surface, horticultural plants or products which are in quality, size, condition, or any other respect so superior to those in the interior of the container in the unexposed portion as to materially misrepresent the contents. Such pack is deceptive when the outer or exposed surface is composed of horticultural plants or products whose size is not an accurate representation of the variation of the size of such horticultural plants or products in the entire container, even though such horticultural plants or products in the container are virtually uniform in size or comply with the specific horticultural plant or product for which the director in prescribing standards for grading and classifying has prescribed size variations or if such size variations are prescribed by law.

(7) "Deceptive arrangement or display" of any horticultural plants or products, means any bulk lot or load, arrangement or display of such horticultural plants or products which has in the exposed surface, horticultural plants or products which are so superior in quality, size, condition, or any other respect to those which are concealed, or the unexposed portion, as to materially misrepresent any part of such bulk lot or load, arrangement, or display.

(8) "Mislabel" means the placing or presence of any false or misleading statement, design, or device upon any container, or upon the label or lining of any such container, or upon the wrapper of any horticultural plants or products, or upon any such horticultural plants or products, or any placard used in connection therewith and having reference to such horticultural plants or products. A statement, design, or device is false or misleading when the horticultural plant or product or container to which it refers does not conform to such statement.

(9) "Container" means any container, subcontainer used within a container, or any type of a container used to prepackage any horticultural plants or products: *Provided*, That this does not include containers used by a retailer to package such horticultural plants or products sold from a bulk display to a consumer.

(10) "Agent" means broker, commission merchant, auctioneer, solicitor, seller, or consignor, and any other person acting upon the actual or implied authority of another.

(11) "Inspection and certification" means, but is not limited to, the inspection of any horticultural plant or product at any time prior to, during, or subsequent to harvest, by the director, and the issuance by him of a written permit to move or sell or a written certificate stating the grade, classification, and if such horticultural plants or products are free of plant pests and/or other defects.

(12) "Plant pests" means, but is not limited to, any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants. [1963 c 122 § 2.]

15.17.030 Enforcement—Director's duties—Rules—Adoption—Changes—Hearings. (1) The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.04 RCW, concerning the adoption of rules, as enacted or hereafter amended.

(2) The director shall, whenever he considers the adoption of rules or amendments to existing rules, consult with growers, associations of growers, or other persons affected by such rules or amendments.

(3) The director may, on his own motion or shall, on the written application of twenty-five or more interested persons, call a hearing for the purpose of considering changes to any rules prescribed under the provisions of this chapter. [1963 c 122 § 3.]

Adoption of rules in respect to horticultural plants and products: RCW 15.17.110.

15.17.040 Unlawful to sell, offer for sale, or ship diseased, pest injured or decayed fruits or vegetables—Exception. It shall be unlawful to sell, offer for sale, hold for sale, ship, or transport any fruits or vegetables in bulk or in containers unless ninety percent or more by weight or count, as established by inspection, are free from (1) plant pest injury which has penetrated or damaged the edible portions; (2) worms, mold, slime, or decay. The provisions of this section shall not apply to those fruits or vegetables for which grades and/or classifications and standards for such grades and/or classifications have been especially provided under the provisions of this chapter or by rules adopted hereunder. [1963 c 122 § 4.]

15.17.050 Rules for grades and classifications, sizes of containers, inspections, etc.—Authority of director

to promulgate. The director may, unless otherwise provided for by the laws of this state, or in this chapter, establish rules:

(1) Providing standards and sizes for grades and/or classifications especially provided for in this chapter for any horticultural plant or product;

(2) Providing grades and/or classifications for any horticultural plant or product not especially provided for in this chapter. In establishing such standards for grades and/or classifications, the director shall take into account the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury. When adopting grades and/or classifications for any horticultural plant or product not especially provided for in this chapter the director may consider and adopt grades and/or classifications established by the secretary of agriculture of the United States in effect on the *effective date of this chapter, and any subsequent amendment to such grades and/or classifications prescribed by the said secretary;

(3) Fixing the sizes and dimensions of containers to be used for the packing or handling of any horticultural plant or product;

(4) Concerning the inspection of any horticultural plant or product subject to the provisions of this chapter or in cooperation with the United States government or any other state;

(5) Necessary to carry out the purpose and provisions of this chapter. [1963 c 122 § 5.]

*Effective date of chapter: See RCW 15.17.930.

15.17.060 Adoption of United States grades and classifications. The director may adopt any United States grade and/or classification for any horticultural plant or product especially provided for in this chapter if such United States grade and/or classification is substantially equivalent to or better than the minimum grade and/or classification especially provided for such horticultural plant or product in this chapter. [1963 c 122 § 6.]

15.17.070 Combination grades. The director may establish combination grades for fruits and vegetables, and standards and sizes for such combination grades. The standards for such combination grades shall, by percentage quantities, include two or more of the grades, except cull grades, especially provided for in this chapter or adopted by rule hereunder. [1963 c 122 § 7.]

15.17.080 Fresh fruits—Culls—Container markings—Designation on bills of lading, invoices, etc. It shall be unlawful for any person to sell fresh fruits for fresh consumption classified as culls under the provisions of this chapter or rules adopted hereunder unless such fruit is packed in one-half bushel or one bushel wooden baskets ring faced, with the fruit in the ring face representative of the size and quality of the fruit in such baskets. Such baskets shall be lidded and the words "cull" including the kind of fruit and variety must appear on the top and side of each basket and on any label thereon in clear and legible letters at least two and one-half

inches high. Every bill of lading, invoice, memorandum, and document referring to said fruit shall designate them as culls. [1963 c 122 § 8.]

15.17.090 Private grades or brands—Approval and registration. The director may approve and register a private grade or brand for any horticultural plant or product: *Provided*, That such private grade or brand shall not be lower than the second grade and/or classification established under the provisions of this chapter or rules adopted hereunder for such horticultural plant or product. [1963 c 122 § 9.]

15.17.100 Apple grades and classifications—Standards—Color standards—Hearings—Notices—Violations. The director shall by rule establish grades and/or classifications for apples and standards and sizes for such grades and/or classifications. In establishing such standards for grades and/or classifications, the director shall take into account the factors of maturity, soundness, color, shape, and freedom from mechanical and plant pest injury. When establishing standards of color requirements for red varieties and partial red varieties of apples, the director shall establish color standards for such varieties which are not less than the following:

1. Arkansas Black	Fifteen percent
2. Spitzenburg (Esopus)	Fifteen percent
3. Winesap	Twenty percent
4. King David	Fifteen percent
5. Delicious	Twenty percent
6. Stayman Winesap	Ten percent
7. Vanderpool	Ten percent
8. Black Twig	Ten percent
9. Jonathan	Ten percent
10. McIntosh	Ten percent
11. Rome	Ten percent
12. Red Sport varieties	Twenty percent

Whenever red sport varieties are marked as such, they shall meet the color requirements of red sport varieties.

The director may upon his own motion or upon the recommendation of an organization such as the Washington state horticultural association's grade and pack committee hold hearings in each major apple producing area concerning changes in apple grades and/or standards for such apple grades as proposed by the director or as recommended by such organization.

The hearings on such recommendations for changes in grades for apples and/or standards for such grades shall be subject to chapter 34.04 RCW concerning the adoption of rules and the director shall publish notice of such hearings at least three times in the legal newspaper with the widest circulation in the major apple producing areas where such hearings are to be held. The last publication of such notice shall be published at least fourteen days prior to such hearings.

The director in making his final determination on his recommendation or those proposed by such organization shall give due consideration to testimony given by producers or producer organizations at such hearing.

It shall be unlawful for any person to sell, offer for sale, hold for sale, ship, or transport any apples unless they comply with the provisions of this chapter and the rules adopted hereunder. [1963 c 122 § 10.]

15.17.110 Apricots, cantaloupes, prunes, peaches, pears, potatoes and tomatoes—Grades and classifications—Standards—Violations—Adoption of horticultural plants and products rules—Hearings—Director's authority not limited. The director shall by rule establish grades and/or classifications for:

- (1) Apricots and standards and sizes for such grades and/or classifications;
- (2) Cantaloupes and standards and sizes for such grades and/or classifications;
- (3) Italian prunes and standards and sizes for such grades and/or classifications;
- (4) Peaches and standards and sizes for such grades and/or classifications;
- (5) Pears and standards and sizes for such grades and/or classifications;
- (6) Potatoes and standards and sizes for such grades and/or classifications;
- (7) Tomatoes and standards and sizes for such grades and/or classifications.

In establishing standards for grades and/or classifications of apricots, cantaloupes, Italian prunes, peaches, pears, potatoes, and tomatoes, the director shall consider, when applicable, the factors of maturity, soundness, color, shape, size, and freedom from mechanical and plant pest injury.

It shall be unlawful for any person to sell, offer for sale, hold for sale, ship, or transport apricots, cantaloupes, Italian prunes, peaches, pears, potatoes, and tomatoes unless they comply with the provisions of this chapter or rules adopted hereunder.

The provisions of this section and of RCW 15.17.100 shall not in any manner be construed to limit the director's authority to adopt grades and/or classifications for any other horticultural plant or product not especially mentioned in such sections or standards and sizes for grades and/or classifications.

The director when adopting rules in respect to horticultural plants or products shall hold a public hearing and shall consult with affected parties, such as growers, associations of growers and handlers and any final rule adopted as a result of a hearing shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and conditions of the industry and shall be for the purpose of promoting the well-being of the members of the horticultural industry as well as for the general welfare of the people of the state. [1963 c 122 § 11.]

Adoption of rules: RCW 15.17.030.

15.17.120 Continuation of grades and classifications adopted pursuant to repealed chapter—Amendment or repeal. The grades and/or classifications and the standards and sizes for such grades and/or classifications relating to horticultural plants and products specifically

mentioned in RCW 15.17.100 and 15.17.110 and included in or adopted under the provisions of chapter 15.16 RCW and in effect immediately prior to the repeal of RCW 15.16.010 through 15.16.490 shall be considered to have been adopted by the director as rules under the provisions of this chapter pursuant to the provisions of chapter 34.04 RCW concerning the adoption of rules, as enacted or hereafter amended. Any amendment or repeal of such rules after the *effective date of this chapter shall be subject to the provisions of chapter 34.04 RCW concerning the adoption of rules as enacted or hereafter amended. [1963 c 122 § 12.]

***Effective date of chapter:** See RCW 15.17.930.

Continuation of rules adopted pursuant to repealed chapter: RCW 15.17.920.

15.17.130 Exemption of certain bulk shipments, processed, or manufactured byproducts from chapter. The provisions of this chapter shall not apply:

(1) To the movement in bulk of any horticultural plant or product from the premises where grown or produced to a packing shed, warehouse, or processing plant within the area of production prior to inspection and/or grading where such inspection and/or grading is to be performed at such packing shed, warehouse, or processing plant; nor

(2) To any processed, canned, frozen, or dehydrated horticultural plants or products; nor

(3) Shall this chapter prevent the manufacture of any infected horticultural plant or product into byproducts or its shipment to a byproducts plant. [1963 c 122 § 13.]

Exemption of sales less than five hundred pounds: RCW 15.17.280.

15.17.140 Inspection and certification—Application for. Any person financially interested in any horticultural plants or products in this state may apply to the director for inspection and certification as to whether such horticultural plants or products meet the requirements provided for by the laws of this state, the provisions of this chapter or rules adopted hereunder, or the standards for grading and classifying such horticultural plants or products established by the secretary of the United States department of agriculture, or by any other state, or by contractual agreement between buyers and sellers of such horticultural plants or products. [1963 c 122 § 14.]

15.17.150 Inspection and certification—Fees. The director shall prescribe the necessary fees to be charged, (1) to the owner or his agent for the inspection and certification of any horticultural plants or products subject to the provisions of this chapter or rules adopted hereunder, (2) for inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants or products which are, or are not, subject to the provisions of this chapter or rules adopted hereunder, produced in, or imported into, this state. The fees provided for in this section shall become due and payable by the end of the next business day and if such fees are not

paid within the prescribed time the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears: *Provided*, That the director in such instances may demand and collect inspection and certification fees prior to inspecting and certifying any horticultural plants or products for such person. [1963 c 122 § 15.]

15.17.160 Third party grading for buyer and seller—Authority of director to provide—Fees. The director may upon application of both buyer and seller provide a state inspector to perform third party grading for the parties and shall charge fees to cover the cost thereof on the same terms and conditions as provided in RCW 15.17.150 for inspection and certification. [1963 c 122 § 16.]

15.17.170 Inspection certificate as evidence. Every inspection certificate issued by the director under the provisions of this chapter shall be received in all the courts of the state as prima facie evidence of the statements therein. [1963 c 122 § 17.]

15.17.180 Containers—Stamping. Any container packed with any horticultural plant or product for which a grade and/or classification has been especially provided in this chapter or adopted by rule hereunder, may be stamped with either or both the state grade and/or classification and the United States grade and/or classification. [1963 c 122 § 18.]

15.17.190 Inspections—Right of access—Samples—Denial of access—Search warrants. The director may enter during business hours and inspect any horticultural facility where any horticultural plants or products are produced, stored, packed, delivered for shipment, loaded, shipped, being transported or sold, and may inspect all such horticultural plants or products and the containers thereof and the equipment in any such horticultural facility. The director may take for inspection such representative samples of such horticultural plants or products and such containers as may be necessary to determine whether or not provisions of this chapter or rules adopted hereunder have been violated, and may subject such samples of horticultural plants or products to any method of inspection or testing. Should the director be denied access to any horticultural facilities where such access was sought for the purpose set forth in this section, he may apply to a court of competent jurisdiction for a search warrant authorizing access to such horticultural facilities for said purpose. The court may upon such application issue the search warrant for the purpose requested. [1963 c 122 § 19.]

15.17.200 Noncomplying horticultural plants or products—Enforcement procedure. The director may affix to any such lot or part thereof of horticultural plants or products a tag or notice of warning that such lot of horticultural plants or products is held and stating the reasons therefor. It shall be unlawful for any person other than the director to detach, alter, deface, or destroy any

such tag or notice affixed to any such lot, or part thereof, of horticultural plants or products, or to remove or dispose of such lot, or part thereof, in any manner or under conditions other than as prescribed in such tag or notice, except on the written permission of the director or the court.

The director shall forthwith cause a notice of non-compliance to be served upon the person in possession of such lot of horticultural plants or products. The notice of noncompliance shall include a description of the lot, the place where, and the reason for which, it is held, and it shall give notice that such lot of horticultural plants or products is a public nuisance and subject to disposal as provided in this section unless, within a minimum of seventy-two hours or such greater time as prescribed in the notice by the director, it is reconditioned or the deficiency is otherwise corrected so as to bring it into compliance.

If the person so served is not the sole owner of such lot of horticultural plants or products, or does not have the authority as an agent for the owner to bring it into compliance, it shall be the duty of such person to notify the director forthwith in writing giving the names and addresses of the owner or owners and all other persons known to him or her to claim an interest in such lot of horticultural plants or products. Any person so served shall be liable for any loss sustained by such owner or other person whose name and address he or she has knowingly concealed from the director.

If such lot of horticultural plants or products has not been reconditioned or the deficiency corrected so as to bring it into compliance within the time specified in the notice, the director shall forthwith cause a copy of such notice to be served upon all persons designated in writing by the person in possession of such lot of horticultural plants or products to be the owner or to claim an interest therein. Any notice required by this section may be served personally or by mail addressed to the person to be served at last known address.

The director with the written consent of all such persons so served, is hereby authorized to destroy such lot of horticultural plants or products or otherwise abate the nuisance. If any such person fails or refuses to give such consent, then the director shall proceed in the manner provided for such purposes in this section.

If such lot of horticultural plants or products is perishable or subject to rapid deterioration the director may, through the prosecutor in the county where such horticultural plants or products are held, file a verified petition in the superior court of the said county to destroy such lot of horticultural plants or products or otherwise abate the nuisance. The petition shall state the condition of such lot of horticultural plants or products, that such lot of horticultural plants or products is held, and that notice of noncompliance has been served as provided in this chapter. The court may then order that such lot of horticultural plants or products be forthwith destroyed or the nuisance otherwise abated as set forth in said order.

If such lot of horticultural plants or products is not perishable or subject to rapid deterioration, the director

may, through the prosecutor in the county in which it is located, file a petition within five days of the serving of the notice of noncompliance upon the owners or person in possession of such lot of horticultural plants or products in the superior court or district court of the said county for an order to show cause, returnable in five days, why such lot of horticultural plants or products should not be abated. The owner or person in possession, on his or her own motion within five days from the expiration of the time specified in the notice of noncompliance, may file a petition in such court for an order to show cause, returnable in five days, why such lot of horticultural plants or products should not be released to the petitioner and any warning tags previously affixed removed therefrom.

The court may enter a judgment ordering that such lot of horticultural plants or products be condemned and destroyed in the manner directed by the court or relabeled, or denatured, or otherwise processed, or sold, or released upon such conditions as the court in its discretion may impose to insure that the nuisance will be abated. In the event of sale by the owner or the court, the costs of storage, handling, reconditioning, and disposal shall be deducted from the proceeds of the sale and the balance, if any, paid into the court for the owner. [1987 c 202 § 172; 1963 c 122 § 20.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.17.210 Violations—Selling, offering for sale, or shipping plants or products not meeting grades, classifications, standards and sizes—Containers—Deceptive practices. It shall be unlawful to sell, offer for sale, hold for sale, ship, or transport any horticultural plants or products:

(1) Subject to the requirements of RCW 15.17.040 unless they meet such requirements;

(2) As meeting the grades and/or classifications and standards and sizes for such grades and/or classifications as adopted or amended by the director under RCW 15.17.050 unless they meet such standards and sizes for such grades and/or classifications;

(3) As meeting the standards and sizes for private grades or brands as approved by the director under RCW 15.17.090 unless they meet such standards and sizes;

(4) In containers other than the size and dimensions prescribed by the director, when he has prescribed by rule such size and dimensions for containers in which any horticultural plants or products will be placed or packed: *Provided*, That this subsection shall not apply when any such horticultural plants or products are being shipped or transported to a packing plant, processing plant, or cold storage facility for preparation for market;

(5) Unless the containers in which such horticultural plants or products are placed or packed are marked as prescribed by the director, with the proper United States and/or Washington grade and/or classification or private grades or brands of such horticultural plants or products;

(6) Unless the containers in which such horticultural plants or products are placed or packed are marked as

prescribed by the director, which may include the following:

(a) The name and address of the grower, or packer, or distributor;

(b) The varieties of such horticultural plants or products;

(c) The size, weight, volume and/or count of such horticultural plants or products;

(7) Which are in containers marked or advertised for sale or sold as being graded and/or classified according to the standards and sizes prescribed by the director or by law unless such horticultural plants or products conform with such grades and/or classifications and their standards and sizes;

(8) Which are deceptively packed;

(9) Which are deceptively arranged or displayed;

(10) Which are mislabeled;

(11) Which do not conform to the provisions of this chapter or rules adopted hereunder. [1963 c 122 § 21.]

15.17.220 Violations—Re-marking containers—Inspection certificates—Refusing or avoiding inspections—Moving tagged plants or products. It shall be unlawful:

(1) To re-mark any container to a higher or superior grade than that marked thereon by the grower or packer of any horticultural plants or products, unless such horticultural plants or products meet the requirements of the higher grade;

(2) For any person to ship or transport or any carrier to accept any horticultural plant or product without an inspection certificate or permit when the director has prescribed by rule that such horticultural plants or products shall be accompanied by an inspection certificate or permit issued by him when shipped or transported. Such inspection certificate or permit shall be on a form prescribed by the director and may include space for stamps or other methods of denoting that all assessments provided for by law have been paid before such horticultural plants or products may lawfully be delivered or accepted for shipment;

(3) For any consignee to accept any shipment of horticultural plants or products which is not accompanied by an inspection certificate or permit prescribed by rule under the provisions of this chapter;

(4) For any reason to refuse to submit any container, load, or display of horticultural plants or products to the inspection of the director, or refuse to stop any vehicle or equipment containing horticultural plants or products for the purpose of inspection by the director;

(5) For any person to move any horticultural plants or products or their containers to which any warning tags or notice from the place where it was affixed, except under a written permit from the director or under his specific direction. [1963 c 122 § 22.]

15.17.230 Horticulture inspection districts. For the purpose of this chapter the state shall be divided into not less than three horticulture inspection districts to which the director may assign one or more inspectors—at-large who as a representative of the director shall supervise

and administer regulatory and inspection affairs of the districts: *Provided*, That for purposes of efficiency and economy the director may by rule promulgated in accordance with the Administrative Procedure Act establish or adjust district boundaries or abolish any district: *Provided, however*, That there shall be at least three districts in existence at all times. [1986 c 203 § 2; 1975 1st ex.s. c 7 § 1; 1969 ex.s. c 76 § 2; 1963 c 122 § 23.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.17.240 Collection, deposit and use of fees—Bond of inspectors—at-large—Accounting. The inspectors—at-large in charge of such inspections shall collect the fees therefor and deposit them in the horticultural district fund in any bank in the district approved for the deposit of state funds. The inspectors—at-large shall expend fees deposited in the horticultural district fund to assist in defraying the expenses of inspections and they shall make payments from the horticultural district fund to the horticultural inspection trust fund in Olympia as authorized by the director in accordance with RCW 15.04.100. Inspectors—at-large shall furnish bonds to the state in amounts set by the director of the department of general administration, pursuant to RCW 43.19.540, with sureties approved by the director of agriculture, conditioned upon the faithful handling of said funds for the purposes specified; and shall, on or before the tenth day of each month, render to the director of agriculture a detailed account of the receipts and disbursements for the preceding month. [1975 c 40 § 3; 1963 c 122 § 24.]

15.17.250 Annual reports of inspectors—at-large—Reduction in service fees, when. On the thirtieth day of June of each year the inspectors—at-large shall render to the legislative authority of every county in which such service has been rendered in their districts, a complete account of the past year's business. In the event that there is money remaining in any horticulture district fund after all expenses for the current year's services have been paid, the service fees charged to contributors in the following year shall be reduced by the amount by which the money remaining in the fund exceeds the average of the gross fee income for the current year and the immediately preceding year. [1977 ex.s. c 26 § 1; 1969 ex.s. c 76 § 3; 1963 c 122 § 25.]

15.17.260 Injunctions. The director may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to this chapter in the superior court in which such violation occurs, notwithstanding the existence of other remedies at law. [1963 c 122 § 26.]

15.17.270 Cooperation with governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1963 c 122 § 31.]

15.17.280 Exemptions. There shall be exempt from the provisions of this chapter the sale of up to five hundred pounds of any fruits or vegetables sold by any producer where grown by any producer and sold directly by producer to ultimate consumer: *Provided*, That such fruits and vegetables shall meet the requirements of RCW 15.17.040. [1963 c 122 § 32.]

Exemptions: RCW 15.17.130.

15.17.290 General penalty. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor. [1963 c 122 § 30.]

15.17.900 Provisions cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1963 c 122 § 27.]

15.17.910 Savings—1963 c 122. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this chapter. [1963 c 122 § 28.]

15.17.920 Continuation of rules adopted pursuant to repealed chapter. The repeal of chapter 15.16 RCW and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of chapter 15.16 RCW not in conflict with the provisions of this chapter and in effect immediately prior to such repeal. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.04 RCW, as enacted or hereafter amended, concerning the adoption of rules. Any amendment or repeal of such rules after the effective date of this chapter shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning the adoption of rules. [1963 c 122 § 29.]

Continuation of grades and classifications adopted pursuant to repealed chapter: RCW 15.17.120.

15.17.930 Effective date—1963 c 122. The effective date of this chapter is July 1, 1963. [1963 c 122 § 34.]

15.17.940 Severability—1963 c 122. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 122 § 33.]

15.17.950 Repealer. Sections 15.16.010 through 15.16.490, chapter 11, Laws of 1961, and RCW 15.16.010 through 15.16.490 are hereby repealed. [1963 c 122 § 35.]

Chapter 15.21
WASHINGTON FRESH FRUIT SALES
LIMITATION ACT

Sections

15.21.010	Declaration of purpose.
15.21.020	Unlawful practices.
15.21.030	Cost.
15.21.040	Combination sales.
15.21.050	Injunction.
15.21.060	Penalties.
15.21.070	Exempt sales.
15.21.900	Chapter cumulative.
15.21.910	Short title.
15.21.920	Severability—1965 c 61.

15.21.010 Declaration of purpose. Limitations or restrictions placed on the buyer by the seller offering fresh fruit for sale as to the amount that such prospective buyer may purchase of the total amount of such fresh fruit owned, possessed or controlled by the seller, may lead to or cause confusion, deceptive trade practices, and interfere with the orderly marketing of fresh fruit necessary for the public health and welfare, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the general health and welfare of the people of this state. [1965 c 61 § 1.]

15.21.020 Unlawful practices. It shall be unlawful to cause a limitation to be placed on the amount of fresh fruit that a purchaser may buy at retail or wholesale when such fresh fruit is offered for sale, through any media, below cost to the seller. The foregoing shall apply to all such fresh fruit offered for sale below cost and owned, possessed or controlled by such seller. [1965 c 61 § 2.]

15.21.030 Cost. Cost for the purpose of this chapter, shall be that price paid for fresh fruit by the seller or the actual replacement cost for such fresh fruit: *Provided*, That the delivered invoice price to such seller shall be prima facie evidence of the price paid for such fresh fruit by the seller. [1965 c 61 § 3.]

15.21.040 Combination sales. When one or more items are offered for sale or sold with one or more items at a combined price, or offered individually or as a package or a unit to be given with the sale of one or more items, each and all such items shall for the purpose of this chapter be deemed to be offered for sale, and as to such transaction the cost basis shall be the combined cost basis of all such items as determined pursuant to RCW 15.21.030. [1965 c 61 § 4.]

15.21.050 Injunction. Any person, prosecuting attorney, or the attorney general may bring an action to enjoin the violation or threatened violation of the provisions of this chapter in the superior court in the county where such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1965 c 61 § 5.]

15.21.060 Penalties. Any person violating the provisions of this chapter is guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent offense: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1965 c 61 § 6.]

15.21.070 Exempt sales. The provisions of this chapter shall not apply to the following sales at retail or sales at wholesale:

- (1) When fresh fruit is sold for charitable purposes or to relief agencies;
- (2) When fresh fruit is sold on contract to departments of the government or governmental institutions;
- (3) When fresh fruit is sold by any officer acting under the order or direction of any court. [1965 c 61 § 7.]

15.21.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 c 61 § 8.]

15.21.910 Short title. This chapter may be cited as the Washington fresh fruit sales limitation act. [1965 c 61 § 9.]

15.21.920 Severability—1965 c 61. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 61 § 10.]

Chapter 15.24
APPLE ADVERTISING COMMISSION

Sections

15.24.010	Definitions.
15.24.020	Commission created—Qualifications of members.
15.24.030	Members—Election—Terms of office—District subdivisions—Meetings of commission.
15.24.040	Members—Nominations—Method of election.
15.24.050	Vacancies—Quorum—Compensation—Travel expenses.
15.24.060	Commission records as evidence.
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15.24.086	Promotional printing contracts—Contractual conditions of employment.
15.24.090	Increase in assessments—Grounds—Procedure.
15.24.100	Assessments levied.
15.24.110	Collection—Due date—Stamps.
15.24.120	Records kept by dealers, handlers, processors.
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15.24.140	Right to inspect.
15.24.150	Treasurer—Bond—Duties—Funds.
15.24.160	Promotional plans—Cooperation of commission.
15.24.170	Rules and regulations—Filing—Publication.
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15.24.190	Claims enforceable against commission assets—Non-liability of other persons and entities—Exception.
15.24.200	Penalties.
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15.24.800	Financing assistance for commission building.
15.24.802	General obligation bonds to fund commission building.
15.24.804	Bond issuance and sale.

15.24.806	Bond proceeds, etc., to state building construction account.
15.24.808	Expenditure of bond proceeds.
15.24.810	Fund for payment of bond principal and interest.
15.24.812	Certification and payment of bond principal and interest.
15.24.814	RCW 15.24.810 and 15.24.812 not exclusive method of payment.
15.24.816	Bonds constitute legal investments for state and other public funds.
15.24.818	Bonds to be issued only after certification of sufficiency of funds.
15.24.900	Purpose of chapter.
15.24.910	Liberal construction.
15.24.920	Severability—1967 c 240.

Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.

15.24.010 Definitions. As used in this chapter:

(1) "Commission" means the Washington state apple advertising commission;

(2) "Ship" means to load apples into a conveyance for transport, except apples being moved from the orchard where grown to a packing house or warehouse within the immediate area of production;

(3) "Handler" means any person who ships or initiates a shipping operation, whether for himself or for another;

(4) "Dealer" means any person who handles, ships, buys, or sells apples, or who acts as sales or purchasing agent, broker, or factor of apples;

(5) "Processor" and "processing plant" means every person to whom and every place to which apples are delivered for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;

(6) "Processing apples" means all apples delivered to a processing plant for drying, dehydrating, canning, pressing, powdering, extracting, cooking, or for use in producing a product or manufacturing a manufactured article;

(7) "Fresh apples" means all apples other than processing apples;

(8) "Director" means the director of the department of agriculture or his duly authorized representative;

(9) "District No. 1" includes the counties of Chelan, Okanogan, and Douglas;

(10) "District No. 2" includes the counties of Kittitas, Yakima, Benton, and Franklin;

(11) "District No. 3" includes all counties in the state not included in the first and second districts; and

(12) "Executive officer" includes, but is not limited to, the principal management executive, sales manager, general manager, or other executive employee of similar responsibility and authority. [1967 c 240 § 22; 1963 c 145 § 1; 1961 c 11 § 15.24.010. Prior: 1937 c 195 § 2; RRS § 2874-2.]

15.24.020 Commission created—Qualifications of members. There is hereby created a Washington state apple advertising commission to be thus known and designated. The commission shall be composed of nine practical apple producers and four practical apple

dealers. The director shall be an ex officio member of the commission without vote.

The nine producer members shall be citizens and residents of this state, over the age of twenty-five years, each of whom, either individually or as an executive officer of a corporation, firm or partnership, is and has been actually engaged in growing and producing apples within the state of Washington for a period of five years, and has during that period derived a substantial portion of his income therefrom: *Provided*, That he may own and operate an apple warehouse and pack and store apples grown by others, without being disqualified, so long as a substantial quantity of the apples handled in such warehouse are grown by him; and he may sell apples grown by himself and others so long as he does not sell a larger quantity of apples grown by others than those grown by himself. The four dealer members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association, or cooperative organization, are and have been actively engaged as dealers in apples within the state of Washington for a period of five years, and are citizens and residents of this state. The qualifications of members of the commission as herein set forth must continue during their term of office. [1967 c 240 § 23; 1963 c 145 § 2; 1961 c 11 § 15.24.020. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

15.24.030 Members—Election—Terms of office—District subdivisions—Meetings of commission. Thirteen persons with the qualifications stated in RCW 15.24.020 as amended in section 23, chapter 240, Laws of 1967 shall be elected members of said commission. Four of the grower members, being positions one, two, three and four, shall be from district No. 1, at least one of whom shall be a resident of and engaged in growing and producing apples in Okanogan county; four of the grower members, being positions five, six, seven and eight, from district No. 2; and one grower member, being position nine from district No. 3. Two of the dealer members, being positions ten and eleven, shall be from district No. 1; and two of the dealer members, being positions twelve and thirteen, shall be from district No. 2.

The commission shall have authority in its discretion to establish by regulation one or more subdivisions of district No. 1 and one or more subdivisions of district No. 2; provided that each of the same includes a substantial apple producing district or districts, and provided the same does not result in an unfair or unequitable voting situation or an unfair or unequitable representation of apple growers on said commission. In such event each of said subdivisions shall be entitled to be represented by one of the said grower members of the commission, who shall be elected by vote of the qualified apple growers in said subdivision of said district, and who shall be a resident of and engaged in growing and producing apples in said subdivision.

The regular term of office of the members of the commission shall be three years from March 1 following their election and until their successors are elected and

qualified. The commission shall hold its annual meeting during the month of March each year for the purpose of electing officers and the transaction of other business and shall hold such other meetings during the year as it shall determine. [1967 c 240 § 24; 1963 c 145 § 3; 1961 c 11 § 15.24.030. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

15.24.040 Members—Nominations—Method of election. The director shall call a meeting of apple growers in each of the three districts and meetings of apple dealers in district No. 1 and district No. 2 for the purpose of nominating their respective members of the commission, when a term is about to expire, or when a vacancy exists, except as provided in RCW 15.24.050, as amended, at times and places to be fixed by the commission. Said meetings shall be held not later than February 15th of each year and insofar as practicable, the said meetings of the growers shall be held at the same time and place as the annual state and district meetings of the Washington state horticultural association and its affiliated clubs, but not while the same are in actual session. Public notice of such meetings shall be given by the commission in such manner as it may determine: *Provided*, That nonreceipt of the notice by any interested person shall not invalidate the proceedings. Any qualified person may be nominated orally for such positions at the said respective meetings. Nominations may also be made within five days after any such meeting by written petition filed in the Wenatchee office of the commission, signed by not less than five apple growers or dealers, as the case may be, residing within the district or within the subdivision if the nomination is made from a subdivision.

The members of the commission shall be elected by secret mail ballot under the supervision of the director: *Provided*, That in any case where there is but one nomination for a position, a secret mail ballot shall not be conducted or required and the director shall certify the candidate to be elected. Grower members of the commission shall be elected by a majority of the votes cast by the apple growers in the respective districts or subdivisions thereof, as the case may be, each grower who operates a commercial producing apple orchard, whether an individual proprietor, partnership, joint venture, or corporation, being entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. An individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though he is also a member of a partnership or corporation which votes for other apple acreage. Dealer members of the commission shall be elected by a majority of the votes cast by the apple dealers in the respective districts, each dealer being entitled to one vote. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes. [1967 c 240 § 25; 1963 c 145 § 4; 1961 c 11 § 15.24.040. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

15.24.050 Vacancies—Quorum—Compensation—Travel expenses. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position until the next annual meeting shall be filled by vote of the remaining members of the commission. At such annual meeting a commissioner shall be elected to fill the balance of the unexpired term.

A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 12; 1975-'76 2nd ex.s. c 34 § 12; 1967 c 240 § 26; 1961 c 11 § 15.24.050. Prior: 1949 c 191 § 1, part; 1937 c 195 § 3, part; Rem. Supp. 1949 § 2874-3, part.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.24.060 Commission records as evidence. Copies of the proceedings, records and acts of the commission, when certified by the secretary and authenticated by the corporate seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1961 c 11 § 15.24.060. Prior: 1937 c 195 § 4, part; RRS § 2874-4, part.]

15.24.070 Powers and duties. The Washington state apple advertising commission is hereby declared and created a corporate body. The powers and duties of the commission shall include the following:

(1) To elect a chairman and such other officers as it deems advisable; and to adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers hereunder, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ and at its pleasure discharge a manager, secretary, agents, attorneys, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(5) To investigate and prosecute violations hereof;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and products thereof;

(7) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To sue and be sued, adopt a corporate seal, and have all of the powers of a corporation;

(9) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient; and

(10) To borrow money and incur indebtedness. [1987 c 393 § 3; 1986 c 203 § 3; 1963 c 145 § 5; 1961 c 11 § 15.24.070. Prior: (i) 1937 c 195 § 8; RRS § 2874-8. (ii) 1937 c 195 § 5; RRS § 2874-5. (iii) 1937 c 195 § 4, part; RRS § 2874-4, part.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.24.080 Research, advertising, and educational campaign. The commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign as continuous as the crop, sales and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of the markets and extent to which public convenience and necessity require research and advertising to be conducted. [1961 c 11 § 15.24.080. Prior: 1937 c 195 § 13, part; RRS § 2874-13, part.]

15.24.085 Promotional printing not restricted by public printer laws. The restrictive provisions of chapter 43.78 RCW shall not apply to promotional printing and literature for the Washington state apple advertising commission, the Washington state fruit commission, or the Washington state dairy products commission. [1961 c 11 § 15.24.085. Prior: 1953 c 222 § 1.]

15.24.086 Promotional printing contracts—Contractual conditions of employment. All such printing contracts provided for in this section and RCW 15.24.085 shall be executed and performed under conditions of employment which shall substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the industrial welfare committee regarding conditions of employment, hours of labor, and minimum wages, and the violation of such provision of any contract shall be ground for cancellation thereof. [1973 1st ex.s. c 154 § 20; 1961 c 11 § 15.24.086. Prior: 1953 c 222 § 2.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

15.24.090 Increase in assessments—Grounds—Procedure. If it appears from investigation by the commission that the revenue from the assessment levied on fresh apples under this chapter is inadequate to accomplish the purposes of this chapter, the commission shall adopt a resolution setting forth the necessities of the industry, the extent and probable cost of the required research, market promotion, and advertising, the extent of public convenience, interest, and necessity, and probable revenue from the assessment levied. It shall thereupon increase the assessment to a sum determined by the commission to be necessary for those purposes based upon a rate per one hundred pounds of apples, gross billing weight, shipped in bulk, container, or any style of package. An increase becomes effective sixty days after

the resolution is adopted or on any other date provided for in the resolution, but shall be first referred by the commission to a referendum mail ballot by the apple growers of this state conducted under the supervision of the director and be approved by a majority of the growers voting on it and also be approved by voting growers who operate more than fifty percent of the acreage voted in the same election. After the mail ballot, if favorable to the increase, the commission shall nevertheless exercise its independent judgment and discretion as to whether or not to approve the increase. [1983 c 95 § 1; 1979 c 20 § 1; 1967 c 240 § 27; 1963 c 145 § 6; 1961 c 11 § 15.24.090. Prior: 1953 c 43 § 1; 1937 c 195 § 13, part; RRS § 2874-13, part.]

15.24.100 Assessments levied. There is hereby levied upon all fresh apples grown annually in this state, and all apples packed as Washington apples, an assessment of twelve cents on each one hundred pounds gross billing weight, plus such annual increases thereof as are imposed pursuant to the provisions of RCW 15.24.090. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter. [1967 c 240 § 28; 1963 c 145 § 7; 1961 c 11 § 15.24.100. Prior: 1937 c 195 § 9; RRS § 2874-9.]

15.24.110 Collection—Due date—Stamps. The assessments on fresh apples shall be paid, or provision made therefor satisfactory to the commission, prior to shipment, and no fresh apples shall be carried, transported, or shipped by any person or by any carrier, railroad, truck, boat, or other conveyance until the assessment has been paid or provision made therefor satisfactory to the commission.

The commission shall by rule or regulation prescribe the method of collection, and for that purpose may require stamps to be known as "apple advertising stamps" to be purchased from the commission and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. [1967 c 240 § 29; 1961 c 11 § 15.24.110. Prior: 1937 c 195 § 12; RRS § 2874-12.]

15.24.120 Records kept by dealers, handlers, processors. Each dealer, handler, and processor shall keep a complete and accurate record of all apples handled, shipped, or processed by him. This record shall be in such form and contain such information as the commission may by rule or regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents. [1961 c 11 § 15.24.120. Prior: 1937 c 195 § 10; RRS § 2874-10.]

15.24.130 Returns rendered by dealers, handlers, processors. Each dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of apples handled, shipped, or processed by him

during the period prescribed by the commission. The return shall contain such further information as the commission may require. [1961 c 11 § 15.24.130. Prior: 1937 c 195 § 11; RRS § 2874-11.]

15.24.140 Right to inspect. The commission may inspect the premises and records of any carrier, handler, dealer, or processor for the purpose of enforcing this chapter and the collection of the excise tax. [1961 c 11 § 15.24.140. Prior: 1937 c 195 § 19; RRS § 2874-19.]

15.24.150 Treasurer—Bond—Duties—Funds. The commission shall appoint a treasurer who shall file with it a fidelity bond executed by a surety company authorized to do business in this state, in favor of the commission and the state, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his duties and strict accounting of all funds of the commission.

All money received by the commission, or any other state official from the assessment herein levied, shall be paid to the treasurer, deposited in such banks as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01-.050 shall apply to money collected under this chapter. [1961 c 11 § 15.24.150. Prior: 1937 c 195 § 6; RRS § 2874-6.]

15.24.160 Promotional plans—Cooperation of commission. The commission may employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission for the purpose of promoting the general welfare of the apple industry and particularly for the purpose of assisting in the sale and distribution of apples in domestic or foreign commerce, and expend its funds or such portion thereof as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of apples in domestic or foreign commerce. For such purposes it may employ and pay for legal counsel and contract and pay for other professional services. [1961 c 11 § 15.24.160. Prior: 1947 c 280 § 3; Rem. Supp. 1947 § 2909-3.]

15.24.170 Rules and regulations—Filing—Publication. Rules, regulations, and orders made by the commission shall be filed with the director and published in a legal newspaper in the cities of Wenatchee and Yakima within five days after being made, and shall become effective pursuant to the provisions of RCW 34.04.040. [1975 1st ex.s. c 7 § 37; 1961 c 11 § 15.24.170. Prior: 1937 c 195 § 18; RRS § 2874-18.]

15.24.180 Enforcement. All county and state law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.24.180. Prior: 1937 c 195 § 16; RRS § 2874-16.]

15.24.190 Claims enforceable against commission assets—Nonliability of other persons and entities—Exception. Obligations incurred by the commission and

any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee, or agent of the commission in his or her individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime. No such person or employee may be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member is liable for the default of any other member. [1987 c 393 § 4; 1961 c 11 § 15.24.190. Prior: 1937 c 195 § 7; RRS § 2874-7.]

15.24.200 Penalties. Any person who violates or aids in the violation of any provision of this chapter shall be guilty of a gross misdemeanor, and any person who violates or aids in the violation of any rule or regulation of the commission shall be guilty of a misdemeanor. [1961 c 11 § 15.24.200. Prior: 1937 c 195 § 14; RRS § 2874-14.]

15.24.210 Prosecutions. Any prosecution brought under this chapter may be instituted in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his principal place of business.

The superior courts are hereby vested with jurisdiction to enforce the provisions of this chapter and the rules and regulations of the commission issued hereunder, and to prevent and restrain violations thereof. [1961 c 11 § 15.24.210. Prior: 1937 c 195 § 15; RRS § 2874-15.]

15.24.800 Financing assistance for commission building. The legislature hereby finds that, in order to permit the Washington state apple advertising commission to accomplish more efficiently its important public purposes, as enumerated in chapter 15.24 RCW, it is necessary for the state to assist in financing a new building for the commission, to be located on Euclid Avenue in Chelan county, and housing commission offices, warehouse space, and a display room. The state's assistance shall augment approximately five hundred thousand dollars in commission funds which will be applied directly to the payment of the costs of this project. The state's assistance shall be in the amount of eight hundred thousand dollars, or so much thereof as may be required, to be provided from the proceeds from the sale and issuance of general obligation bonds of the state, the principal of and interest on which shall be reimbursed to the state treasury by the commission from revenues derived from the assessments levied pursuant to chapter 15.24 RCW and other sources. [1987 c 6 § 1.]

Severability—1987 c 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." [1987 c 6 § 12.]

15.24.802 General obligation bonds to fund commission building. For the purpose of providing part of the funds necessary for the Washington state apple advertising commission to undertake a capital project consisting of the land acquisition for, and the design, construction, furnishing, and equipping of, the building described in RCW 15.24.800, and to pay the administrative costs of such project, including costs of bond issuance and retirement, salaries and related costs of officials and employees of the state, and other expenses incidental to the administration of such project, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eight hundred thousand dollars, or so much thereof as may be required. [1987 c 6 § 2.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.804 Bond issuance and sale. The bonds authorized in RCW 15.24.802 shall be issued and sold in accordance with the provisions of chapter 39.42 RCW. [1987 c 6 § 3.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.806 Bond proceeds, etc., to state building construction account. The proceeds from the sale of the bonds authorized in RCW 15.24.802, together with all grants, donations, transferred funds, and all other moneys which the state finance committee or the Washington state apple advertising commission may direct the state treasurer to deposit therein, shall be deposited in the state building construction account in the state treasury. [1987 c 6 § 4.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.808 Expenditure of bond proceeds. Subject to legislative appropriation, all proceeds from the sale of the bonds authorized in RCW 15.24.802 shall be administered and expended by the Washington state apple advertising commission exclusively for the purposes specified in RCW 15.24.802. [1987 c 6 § 5.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.810 Fund for payment of bond principal and interest. The state general obligation bond retirement fund shall be used for the payment of the principal of and interest on the bonds authorized to be issued under RCW 15.24.802. The state finance committee may provide for the creation of one or more separate accounts in such fund to facilitate payment of such principal and interest.

On or before June 30 of each year, the state finance committee shall certify to the state treasurer the amounts required in the next succeeding twelve months for the payment of the principal of and the interest on such bonds coming due in accordance with the provisions of the bond proceedings. Not less than thirty days prior

to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund, or a special account in such fund, the amount certified by the state finance committee to be due on the payment date. [1987 c 6 § 6.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.812 Certification and payment of bond principal and interest. On or before June 30 of each year, the state finance committee shall certify to the Washington state apple advertising commission the principal and interest payments determined under RCW 15.24.810, exclusive of deposit interest credit, attributable to the bonds issued under RCW 15.24.802. On each date on which any interest or principal and interest payment is due, the commission shall cause the amount certified by the state finance committee to be due on such date to be paid out of the commission's general fund to the state treasurer for deposit into the general fund of the state treasury. [1987 c 6 § 7.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.814 RCW 15.24.810 and 15.24.812 not exclusive method of payment. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 15.24.802, and RCW 15.24.810 and 15.24.812 shall not be deemed to provide an exclusive method for the payment of such principal and interest. [1987 c 6 § 8.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.816 Bonds constitute legal investments for state and other public funds. The bonds authorized by RCW 15.24.802 shall constitute legal investments for all state funds or for funds under state control and all funds of any other public body. [1987 c 6 § 9.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.818 Bonds to be issued only after certification of sufficiency of funds. The bonds authorized by RCW 15.24.802 shall be issued only after the treasurer of the Washington state apple advertising commission has certified that the net proceeds of the bonds, together with all money to be made available by the commission for the purposes described in RCW 15.24.802, shall be sufficient for such purposes; and also that, based upon the treasurer's estimates of future income from assessments levied pursuant to chapter 15.24 RCW and other sources, an adequate balance will be maintained in the commission's general fund to enable the commission to meet the requirements of RCW 15.24.812 during the life of the bonds to be issued. [1987 c 6 § 10.]

Severability—1987 c 6: See note following RCW 15.24.800.

15.24.900 Purpose of chapter. This chapter is passed:

(1) In the exercise of the police power of the state to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of the state;

(2) Because the apple crop grown in Washington comprises one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(3) Because it is necessary and expedient to enhance the reputation of Washington apples in domestic and foreign markets;

(4) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington apples, and to spread that knowledge throughout the world in order to increase the consumption of Washington apples;

(5) Because Washington grown apples are handicapped by high freight rates in competition with eastern and foreign grown apples in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(6) Because the stabilizing of the apple industry, the enlarging of its markets, and the increasing of the consumption of apples are necessary to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and increase wages for agricultural labor;

(7) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only apples of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary;

(8) To protect the general public by educating it in reference to the various varieties and grades of Washington apples, the time to use and consume each variety, and the uses to which each variety should be put. [1961 c 11 § 15.24.900. Prior: 1937 c 195 § 1; RRS § 2874-1.]

15.24.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.24.910. Prior: 1937 c 195 § 17; RRS § 2874-17.]

15.24.920 Severability—1967 c 240. See note following RCW 43.23.010.

Chapter 15.26

TREE FRUIT RESEARCH ACT

Sections

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15.26.010 Short title. This chapter shall be known and cited as the "tree fruit research act." [1969 c 129 § 1.]

15.26.020 Purpose. The purpose of this chapter is for the creation of a commission which shall promote and carry on research and administer specific industry service programs, including but not limited to sanitation programs, which will or may benefit the planting, production, harvesting, handling, processing or shipment of tree fruit of this state, which shall collect assessments on tree fruit in this state and which shall coordinate its research efforts with those of other state, federal, or private agencies doing similar research. [1983 c 281 § 1; 1969 c 129 § 2.]

15.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or his duly authorized representative.

(3) "Person" means any natural persons, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(4) "Producer" means any person who owns or is engaged in the business of commercially producing tree

fruit or has orchard plantings intended for commercial tree fruit production.

(5) "Sanitation program" means a program designed to eliminate pests and/or plants or trees which serve as hosts to pests or diseases of tree fruits. [1983 c 281 § 2; 1969 c 129 § 3.]

15.26.040 Tree fruit research commission created—Membership. There is hereby created the Washington tree fruit research commission, to be thus known and designated. The commission shall be composed of nine members. Three members to be appointed by the Washington state fruit commission, five members to be appointed by the apple advertising commission, and one member representing the winter pear industry to be appointed by the director. The director or his duly authorized representative shall be ex officio member with a vote, to represent all assessed commodities. The appointed members of the commission shall serve at the will of their respective appointers even though appointed for specific terms as set forth in RCW 15.26.070. [1969 c 129 § 4.]

15.26.050 Qualifications of members. Nine members of the commission shall be producers who are citizens and residents of this state. Each producer member shall be over the age of twenty-five years and have been actively engaged in growing tree fruits in this state and deriving a substantial portion of his income therefrom, or having a substantial amount of orchard acreage devoted to tree fruit production or as an owner, lessee, partner or an employee or officer of a firm engaged in the production of tree fruit whose responsibility to such firm shall be primarily in the production of tree fruit. Such employee or officer of such firm shall be actually engaged in such duties relating to the production of tree fruit with such firm or any other such firm for a period of at least five years. The qualifications of the members of the commission set forth in this section shall continue during their term of office. [1969 c 129 § 5.]

15.26.060 Appointment of members. The apple advertising commission shall appoint producer members to positions one through five on the commission. The Washington state fruit commission shall appoint producer members to positions six through eight on the commission. The director shall appoint a producer who derives a substantial portion of his income from the production of winter pears. [1969 c 129 § 6.]

15.26.070 Terms of members. The terms of the members of commission shall be staggered and each shall serve for a term of three years and until their successor has been appointed and qualified: *Provided*, That the first appointments to the commission beginning July 30, 1969, shall be for the following terms:

- (1) Positions one, four, and seven, one year.
- (2) Positions two, five, and eight, two years.
- (3) Positions three, six, and nine, three years. [1969 c 129 § 7.]

15.26.080 Vacancies. In the event a commission member resigns, is disqualified, or vacates his position on the commission for any other reason, the appointing agency that originally appointed such member shall within sixty days appoint a new member to fill the term of the vacated member. [1969 c 129 § 8.]

15.26.090 Quorum. A majority of the members of the commission shall constitute a quorum for the transaction of all business and carrying out the duties of the commission: *Provided*, That on all fiscal matters, approval for passage must be by at least two-thirds majority of the said quorum. [1969 c 129 § 9.]

15.26.100 Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 13; 1975-'76 2nd ex.s. c 34 § 13; 1969 c 129 § 10.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.26.110 Powers of commission. The powers of the commission shall include the following:

- (1) To elect a chairman, treasurer, and such other officers as it deems advisable;
- (2) To adopt any rules and regulations necessary to carry out the purposes and provisions of this chapter, in conformance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as enacted or hereafter amended;
- (3) To administer and carry out the provisions of this chapter and do all those things necessary to carry out its purposes;
- (4) To employ and at its pleasure discharge a manager, secretary, agents, and employees as it deems necessary, and prescribe their duties and fix their compensation;
- (5) To own, lease or contract for any real or personal property necessary to carry out the purposes of this chapter, and transfer and convey the same;
- (6) To establish offices and incur expenses and enter into contracts and to create such liabilities as may be reasonable for administration and enforcement of this chapter;
- (7) Make necessary disbursements for the operation of the commission in carrying out the purposes and provisions of this chapter;
- (8) To employ, subject to the approval of the attorney general, attorneys necessary, and to maintain in its own name any and all legal actions, including actions for injunction, mandatory injunctions, or civil recovery, or proceedings before administrative tribunals or other government authorities necessary to carry out the purpose of this chapter;

(9) To carry on any research which will or may benefit the planting, production, harvesting, handling, processing, or shipment of any tree fruit subject to the provisions of this chapter. To contract with any person, private or public, public agency, federal, state or local, or enter into agreements with other states or federal agencies, to carry on such research jointly or enter into joint contracts with such states or federal agencies or other recognized private or public agencies, to carry on desired research provided for in this chapter;

(10) To appoint annually, ex officio commission members without a vote who are experts in research whether public or private in any area concerning or related to tree fruit to serve at the pleasure of the commission;

(11) Such other powers and duties that are necessary to carry out the purpose of this chapter. [1969 c 129 § 11.]

15.26.120 Assessments levied—Referendum. There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment, initially not to exceed ten cents per ton on all such tree fruits, except that such assessment for apples for fresh shipment shall be at the rate of one-half cent per one hundred pounds gross billing weight. Such assessment on all such commercial tree fruit shall not become effective until approved by a majority of such commercial producers of tree fruit voting in a referendum conducted jointly by the apple advertising commission, Washington state fruit commission and the department. The respective commissions shall supply all known producers of tree fruits subject to their respective commissions with a ballot for the referendum and the department shall supply all known tree fruit producers not subject to either of the commissions with a ballot wherein all known producers may approve or disapprove such assessment. The commission may waive the payment of assessments by any class of producers of minimal amounts of tree fruit when the commission determines subsequent to a hearing that the cost of collecting and keeping records of such assessments is disproportionate to the return to the commission. [1969 c 129 § 12.]

15.26.130 List of producers. The apple advertising commission and the Washington state fruit commission shall supply the director with a list of known producers subject to paying assessments to the respective commissions. The director, in addition, shall at the commission's cost compile a list of known tree fruit producers producing fruit not subject to assessments of the apple advertising commission and the Washington state fruit commission but subject to assessments or becoming subject to assessments under the provisions of this chapter. In compiling such list the director shall publish notice to producers of such tree fruit, requiring them to file with the director a report giving the producer's name, mailing address and orchard location. The notice shall be published once a week for four consecutive weeks in weekly or daily newspapers of general circulation in the area or

areas where such tree fruit is produced. All producer reports shall be filed with the director within twenty days from the date of last publication of notice or thirty days of mailing notice to producers of such tree fruit, whichever is later. The director shall for the purpose of conducting any referendum affecting tree fruits subject to the provisions of this chapter keep such list up to date when conducting such referendum. Every person who becomes a producer after said list is compiled shall file with the director a similar report, giving his name, mailing address and orchard location. Such list shall be final and conclusive in conducting referendums and failure to notify a producer shall not be cause for the invalidation of any referendum. [1969 c 129 § 13.]

15.26.140 Increase in assessments by referendum. The producers of tree fruit subject to the provisions of this chapter may subsequent to approving initial assessment increase such assessment by referendum when approved by a majority of the producers voting. [1969 c 129 § 14.]

15.26.150 Additional assessments for special projects. The producers of any specific tree fruit subject to the provisions of this chapter may at any time by referendum conducted by the department and approved by a majority of the producers voting of such specific tree fruit establish an additional assessment on such specific tree fruit for special research projects of special interest to such specific tree fruit. [1969 c 129 § 15.]

15.26.155 Additional assessment—Referendum—Limitation—Suspension. The producers of tree fruit subject to the provisions of this chapter may at any time, by referendum conducted by the department and approved by a majority of the producers voting, establish an additional assessment for programs including but not limited to sanitation programs. The total amount assessed for any specific industry service program under this section shall not exceed one hundred thousand dollars in any single crop year. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend all or part of the assessments on tree fruit under this section. [1983 c 281 § 3.]

15.26.160 Suspension of assessments. The members of the commission may, subject to approval by two-thirds of the voting members of the commission, suspend for a period not exceeding one crop year at a time all or part of the assessments on tree fruit subject to the provisions of this chapter. [1969 c 129 § 16.]

15.26.170 Payment of assessments required before purchase, receipt or shipment of fruit. Such assessments will be due from the producers. No person shall purchase, or receive for sale, or shipment out of state any tree fruits subject to the provisions of this chapter until he has received proof that the assessment due and payable the commission has been paid. [1969 c 129 § 17.]

15.26.180 Records of persons receiving fruit. Any person receiving commercial tree fruits from any producer thereof or any producer of tree fruit who prepared or processed his own tree fruit for sale, or shipment for sale shall keep complete and accurate records of all such tree fruit. Such records shall meet the requirements of rules or regulations prescribed by the commission and shall be kept for two years subject to inspection by duly authorized representatives of the commission. [1969 c 129 § 18.]

15.26.190 Return of dealers, handlers, and processors—Filing—Contents. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of tree fruit, subject to the provisions of this chapter, handled, shipped, or processed by him during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [1969 c 129 § 19.]

15.26.200 Assessments—When due and payable—Collection. Such assessments on tree fruits shall be due and payable by the producer thereof by the end of the next business day that such tree fruits are sold or shipped for sale unless such time is extended as provided for in RCW 15.26.210 by rule or regulation of the commission. The commission may by rule or regulation provide that such assessments shall be collected from the producer and remitted by the person purchasing, or receiving such tree fruit for sale, processing, or shipment anywhere. [1969 c 129 § 20.]

15.26.210 Assessments—Constitute personal debt. Any due and payable assessments herein levied shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable as provided for in RCW 15.26.200, unless the commission by rules or regulations provides for payment to be made not later than thirty days after the time set forth in RCW 15.26.200: *Provided*, That such extension of time shall not apply to any person who is in arrears in his payments to the commission. [1969 c 129 § 21.]

15.26.220 Assessments—Failure to pay—Collection. In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the commission may add to such unpaid assessment or sum an amount not more than ten percent but not less than one dollar of the same to defray the cost of enforcing the collection of such assessment, together with interest on the unpaid balance of one percent per month commencing the first month following the month in which payment was due. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for

the collection thereof, together with the interest and the above specified ten percent thereon, and such reasonable attorneys' fees as may be allowed by the court, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 129 § 22.]

15.26.230 Disposition of moneys collected—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, and be deposited by him in banks designated by the commission, and disbursed on the order of the commission. The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do business in this state, in favor of the state and the commission, jointly and severally, in a sum to be fixed by the commission, but not less than twenty-five thousand dollars, and conditioned upon his faithful performance of his duties and his strict accounting of all funds of the commission. RCW 43.01.050 shall not apply to money collected under this chapter. [1969 c 129 § 23.]

15.26.235 Collection, administration, and dispersal of funds for industry service programs. Funds collected and expenditures made for specific industry service programs shall be collected, administered, and dispersed separately from all other funds authorized and collected for research by the commission. The commission may appoint a committee to advise them regarding the need for specific industry service programs and regarding the administration of the assessments collected under RCW 15.26.155. [1983 c 281 § 4.]

15.26.240 Nonliability of state, members, employees. Obligations incurred by the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or acts of the commission shall exist against either the state of Washington, or against any member, officer, employee, or agent of the commission in his individual capacity. The members of the commission including employees of the commission, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes or other acts, either of commission or omission as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall not be several and joint and no member shall be liable for the default of any other member. [1969 c 129 § 24.]

15.26.250 Collection of assessments for commission by apple advertising commission and state fruit commission. The apple advertising commission and Washington state fruit commission in order to avoid unnecessary duplication of costs and efforts in collecting assessments for tree fruits at the time said commissions collect assessments due under the provisions of their acts may also

collect the assessment due the commission on such tree fruit. Such assessments on winter pears may be collected by the Washington state fruit commission or in a manner prescribed by the commission. Assessments collected for the commission by the Washington state apple advertising commission and the Washington state fruit commission shall be forwarded to the commissions expeditiously. No fee shall be charged the commission for the collection of assessments because the research conducted by the commission shall be of direct benefit to all commercial growers of tree fruits in the state of Washington: *Provided*, That the commission shall reimburse at actual cost to the department or the Washington state fruit commission or apple commission any assessment collected for the commission by such agencies for any tree fruit subject to the provisions of this chapter, but not subject to pay assessments to the Washington state fruit commission or the apple advertising commission. [1969 c 129 § 25.]

15.26.260 Legal costs and expenses to be borne by commission. All legal costs and expenses that may be incurred in the collection of delinquent accounts owed this commission shall be borne by the commission; except as provided for otherwise in RCW 15.26.220. [1969 c 129 § 26.]

15.26.270 Copies of commission's proceedings, records, acts as evidence. Copies of the commission's proceedings, records, and acts when certified by the secretary and authenticated by the commission's seal shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1969 c 129 § 27.]

15.26.280 Moneys collected retained by commission. All moneys collected by the commission under the provisions of this chapter shall be retained by the commission for the purpose of carrying out the purpose and provisions of this chapter. The commission may accept and retain any moneys from private persons or private or public agencies to carry out the purposes and provisions of this chapter. [1969 c 129 § 28.]

15.26.290 Contracts with public or private agencies to carry out chapter. The commission may enter into agreement or contract with any private person or any private or public agency whether federal, state or local in order to carry out the purposes and provisions of this chapter. [1969 c 129 § 29.]

15.26.300 Violations—Penalty. Any person violating any provision of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 c 129 § 30.]

15.26.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 c 129 § 32.]

15.26.910 Severability—1969 c 129. If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 c 129 § 33.]

Chapter 15.28 SOFT TREE FRUITS

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15.28.010 Definitions. As used in this chapter:

(1) "Commission" means the Washington state fruit commission.

(2) "Shipment" or "shipped" includes loading in a conveyance to be transported to market for resale, and includes delivery to a processor or processing plant, but does not include movement from the orchard where grown to a packing or storage plant within this state for fresh shipment;

(3) "Handler" means any person who ships or initiates the shipping operation, whether as owner, agent or otherwise;

(4) "Dealer" means any person who handles, ships, buys, or sells soft tree fruits other than those grown by him, or who acts as sales or purchasing agent, broker, or factor of soft tree fruits;

(5) "Processor" or "processing plant" includes every person or plant receiving soft tree fruits for the purpose of drying, dehydrating, canning, pressing, powdering, extracting, cooking, quick-freezing, brining, or for use in manufacturing a product;

(6) "Soft tree fruits" mean Bartlett pears and all varieties of cherries, apricots, prunes, plums and peaches. "Bartlett pears" means and includes all standard Bartlett pears and all varieties, strains, subvarieties, and sport varieties of Bartlett pears including Red Bartlett pears, that are harvested and utilized at approximately the same time and approximately in the same manner.

(7) "Commercial fruit" or "commercial grade" means soft tree fruits meeting the requirements of any established or recognized fresh fruit or processing grade. Fruit bought or sold on orchard run basis and not subject to cull weighback shall be deemed to be "commercial fruit."

(8) "Cull grade" means fruit of lower than commercial grade except when such fruit included with commercial fruit does not exceed the permissible tolerance permitted in a commercial grade;

(9) "Producer" means any person who is a grower of any soft tree fruit;

(10) "District No. 1" or "first district" includes the counties of Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane and Lincoln;

(11) "District No. 2" or "second district" includes the counties of Kittitas, Yakima, and Benton county north of the Yakima river;

(12) "District No. 3" or "third district" comprises all of the state not included in the first and second districts. [1973 c 11 § 1; 1963 c 51 § 1; 1961 c 11 § 15.28.010. Prior: 1955 c 47 § 1; 1947 c 73 § 1; Rem. Supp. 1947 § 2909-10.]

15.28.020 Commission created—Members, voting and ex officio—Quorum. A corporation to be known as the Washington state fruit commission is hereby created, composed of sixteen voting members, to wit: Ten producers, four dealers, and two processors, who shall be elected and qualified as herein provided. The director of agriculture, hereinafter referred to as the director, or his duly authorized representative, shall be an ex officio member without a vote.

A majority of the voting members shall constitute a quorum for the transaction of any business. [1967 c 191 § 1; 1961 c 11 § 15.28.020. Prior: (i) 1947 c 73 § 2; Rem. Supp. 1947 § 2901-11. (ii) 1947 c 73 § 9; Rem. Supp. 1947 § 2909-18. (iii) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909-22, part.]

Effective date—1967 c 191: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That section 5 of this 1967 amendatory act shall not take effect until July 1, 1968." [1967 c 191 § 9.] For codification of 1967 c 191, see Codification Tables, Volume 0.

15.28.030 Qualifications of voting members. All voting members must be citizens and residents of this state. Each producer member must be over the age of twenty-

five years, and be, and for five years have been, actively engaged in growing soft tree fruits in this state, and deriving a substantial portion of his income therefrom, or have a substantial amount of orchard acreage devoted to soft tree fruit production as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of soft tree fruit. He cannot be engaged directly in business as a dealer. Each dealer member must be actively engaged, either individually or as an executive officer, employee or sales manager on a management level, or managing agent of an organization, as a dealer. Each processor member must be engaged, either individually or as an executive officer, employee on a management level, sales manager, or managing agent of an organization, as a processor. Only one dealer member may be in the employ of any one person or organization engaged in business as a dealer. Only one processor member may be in the employ of any one person or organization engaged in business as a processor. Said qualifications must continue throughout each member's term of office. [1967 c 191 § 2; 1961 c 11 § 15.28.030. Prior: 1947 c 73 § 3; Rem. Supp. 1947 § 2909-12.]

15.28.040 Election of voting members—Positions. Of the producer members, four shall be elected from the first district and occupy positions one, two, three and four; four shall be elected from the second district and occupy positions five, six, seven and eight, and two shall be elected from the third district and occupy positions nine and ten.

Of the dealer members, two shall be elected from each of the first and second districts and respectively occupy positions eleven and twelve from the first district and positions thirteen and fourteen from the second district.

The processor members shall be elected from the state at large and occupy positions fifteen and sixteen. The dealer member position previously referred to as position twelve shall henceforth be position thirteen. The processor member position heretofore referred to as position fourteen shall cease to exist on March 21, 1967. The processor member position heretofore referred to as thirteen shall be known as position sixteen. [1967 c 191 § 3; 1961 c 11 § 15.28.040. Prior: 1947 c 73 § 4; Rem. Supp. 1947 § 2909-13.]

15.28.050 Terms of office. The regular term of office of the members of the commission shall be three years commencing on May 1, following the date of election and until their successors are elected and qualified, except, however, that the first term of dealer position twelve in the first district shall be for two years and expire May 1, 1969. [1967 c 191 § 4; 1961 c 11 § 15.28.050. Prior: 1947 c 73 § 5; Rem. Supp. 1947 § 2909-14.]

15.28.055 Terms of present members. Present members of the state fruit commission as provided for in RCW 15.28.020 shall serve until the first day of May of the year in which their terms would ordinarily expire and until their successors are elected and qualified. [1967 c 191 § 8.]

15.28.060 Nominating meetings—Notice—Election—Ballots—Eligible voters. The director shall call meetings at times and places concurred upon by the director and the commission for the purpose of nominating producer, dealer or processor members for election to the commission when such members' terms are about to expire. Notice of such meetings shall be given at least sixty days prior to the time the respective members' term is about to expire. The nominating meetings shall be held at least sixty days prior to the expiration of the respective members' term of office.

Notice shall be given by the commission by mail to all known persons having a right to vote for such respective nominee's election to the commission.

Further, the commission shall publish notice at least once in a newspaper of general circulation in the district where the nomination is to be held. Such a newspaper may be published daily or weekly. The failure of any person entitled to receive notice of such nominating meeting shall not invalidate such nominating meeting or the election of a member nominated at such meeting.

Any person qualified to serve on the commission may be nominated orally at said nomination meetings. Written nominations, signed by five persons qualified to vote for the said nominee, may be made for five days subsequent to said nomination meeting. Such written nominations shall be filed with the commission at its Yakima office.

Members of the commission shall be elected by a secret mail ballot, and such election shall be conducted under the supervision of the director, and the elected candidate shall become a member of the commission upon certification of the director that said elected candidate has satisfied the required qualifications for membership on the commission.

When only one nominee is nominated for any position on the commission, the director shall, if such nominee satisfies the requirements of the position for which he was nominated, certify the said nominee as to his qualifications and then it shall be deemed that said nominee has been duly elected. Nominees receiving a majority of the votes in an election shall be considered to have been elected and if more than one position is to be filled in a district or at large, the nominees respectively receiving the largest number of votes shall be deemed to have been elected to fill the vacancies from said districts or areas on the commission. Persons qualified to vote for members of the commission shall, except as otherwise provided by law or rule or regulation of the commission, vote only in the district in which their activities make them eligible to vote for a member of the commission.

A producer to be eligible to vote in an election for a producer member of the commission must be a commercial producer of soft tree fruits paying assessments to the commission.

When a legal entity acting as a producer, dealer, or processor is qualified to vote for a candidate in any district or area to serve in a specified position on the commission, such legal entity may cast only one vote for such candidate, regardless of the number of persons comprising such legal entity or stockholders owning

stock therein. [1967 c 191 § 6; 1963 c 51 § 2; 1961 c 11 § 15.28.060. Prior: 1947 c 73 § 6; Rem. Supp. 1947 § 2909-15.]

15.28.070 Rules and regulations—Establishment of subdistricts. The commission shall have the authority, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act), for adopting rules and regulations, after public hearing, establishing one or more subdistricts in any one of the three districts. Such subdistricts shall include a substantial portion of the soft tree fruit producing area in the district in which they are formed.

The commission shall, when a subdistrict has been formed within one of the districts as in this section provided for, assign one of the districts' producer positions on the commission to said subdistrict. Such producer position may only be filled by a producer residing in such subdistrict, whether by election, apportionment, or appointment. [1967 c 191 § 7; 1961 c 11 § 15.28.070. Prior: 1947 c 73 § 7; Rem. Supp. 1947 § 2909-16.]

15.28.080 Vacancies on commission—How filled. In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position, until the next annual election meeting, shall be filled by vote of the remaining members of the commission. At such annual election a commissioner shall be elected to fill the balance of the unexpired term. [1961 c 11 § 15.28.080. Prior: 1947 c 73 § 8; Rem. Supp. 1947 § 2909-17.]

15.28.090 Compensation of members—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when out of state on official commission business. [1984 c 287 § 14; 1975-'76 2nd ex.s. c 34 § 14; 1967 c 191 § 5; 1961 c 11 § 15.28.090. Prior: 1947 c 73 § 10; Rem. Supp. 1947 § 2909-19.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Effective date—1967 c 191: See note following RCW 15.28.020.

15.28.100 Powers of commission. The Washington state fruit commission is hereby declared and created a corporate body. The commission has power:

- (1) To exercise all of the powers of a corporation;
- (2) To elect a chairman and such other officers as it may deem advisable;
- (3) To adopt, amend or repeal, from time to time, necessary and proper rules, regulations and orders for the performance of its duties, which rules, regulations and orders shall have the force of laws when not inconsistent with existing laws;
- (4) To employ, and at its pleasure discharge, such attorneys, advertising manager, agents or agencies, clerks

and employees, as it deems necessary and fix their compensation;

(5) To establish offices, and incur such expenses, enter into such contracts, and create such liabilities, as it deems reasonably necessary for the proper administration of this chapter;

(6) To accept contributions of, or match private, state or federal funds available for research, and make contributions to persons or state or federal agencies conducting such research;

(7) To administer and enforce this chapter, and do and perform all acts and exercise all powers deemed reasonably necessary, proper or advisable to effectuate the purposes of this chapter, and to perpetuate and promote the general welfare of the soft tree fruit industry of this state;

(8) To sue and be sued. [1961 c 11 § 15.28.100. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909–22, part. (ii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909–24, part. (iii) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909–26, part.]

15.28.110 Duties of commission. The commission's duties are:

(1) To adopt a corporate seal;

(2) To elect a secretary–manager, and a treasurer, and fix their compensation. The same person may be elected to both of said offices;

(3) To establish classifications of soft tree fruits;

(4) To conduct scientific research and develop the healthful, therapeutic and dietetic value of said fruits, and promote the general welfare of the soft tree fruit industry of the state;

(5) To conduct a comprehensive advertising and educational campaign to effectuate the objects of this chapter;

(6) To increase the production, and develop and expand the markets, and improve the handling and quality of said fruits;

(7) To keep accurate accounts and records of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To investigate and prosecute violations hereof. [1961 c 11 § 15.28.110. Prior: (i) 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909–22, part. (ii) 1947 c 73 § 14; Rem. Supp. 1947 § 2909–23. (iii) 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909–24, part. (iv) 1947 c 73 § 17, part; Rem. Supp. 1947 § 2909–26, part.]

15.28.120 Copies of records as evidence. Copies of the commission's proceedings, records, and acts, when certified by the secretary and authenticated by the corporate seal, shall be admissible in all courts as prima facie evidence of the truth of all statements therein. [1961 c 11 § 15.28.120. Prior: 1947 c 73 § 13, part; Rem. Supp. 1947 § 2909–22, part.]

15.28.130 State, personal, nonliability—Obligations limited by collections. Neither the state, nor any member, agent, or employee of the commission, shall be

liable for the acts of the commission, or upon its contracts.

All salaries, expenses, costs, obligations and liabilities of the commission, and claims arising from the administration of this chapter, shall be payable only from funds collected hereunder. [1961 c 11 § 15.28.130. Prior: 1947 c 73 § 16; Rem. Supp. 1947 § 2909–25.]

15.28.140 District advisory and state commodity committees. There shall be separate district advisory committees and separate state commodity committees for each of the following soft tree fruits, to wit: Bartlett pears, peaches, apricots, prunes and plums, and cherries. The growers, dealers, or processors of each of the soft tree fruits, at their respective annual district meetings may elect separate district advisory committees for each of the soft tree fruits grown, handled, or processed in their respective districts. The district advisory committee shall consist of five members comprising three growers, one dealer and one processor of the respective soft tree fruit groups. Each state commodity committee shall consist of two members from, and selected by, each district advisory committee for each soft fruit. [1961 c 11 § 15.28.140. Prior: 1947 c 73 § 11; Rem. Supp. 1947 § 2909–20.]

15.28.150 Committee organization—Duties. Each district advisory committee and each state commodity committee shall select one of its members as chairman. Meetings may be called by the chairman or by any two members of any committee by giving reasonable written notice of the meeting to each member of such committee. A majority of the members shall be necessary to constitute a quorum. The district advisory committees and state commodity committees shall consult with and advise the commission on matters pertaining to the soft tree fruits which they respectively represent, and the commission shall give due consideration to their recommendations. Any grower, dealer, or processor, if qualified, may be a member of more than one committee. [1961 c 11 § 15.28.150. Prior: 1947 c 73 § 12; Rem. Supp. 1947 § 2909–21.]

15.28.160 Annual assessment—Rate—Exception—Brined sweet cherries assessable. An annual assessment is hereby levied upon all commercial soft tree fruits grown in this state of fifty cents per two thousand pounds (net weight) of said fruits, when shipped fresh or delivered to processors, whether in bulk, loose in containers, or packaged in any style of package, except, that all sales of five hundred pounds or less of such fruits sold by the producer direct to the consumer shall be exempt from said assessments. Sweet cherries which are brined are deemed to be commercial soft tree fruit and therefore assessable hereunder. [1963 c 51 § 3; 1961 c 11 § 15.28.160. Prior: 1947 c 73 § 18; Rem. Supp. 1947 § 2909–27.]

15.28.170 Research and advertising—Power to increase assessment. The commission shall investigate the needs of soft tree fruit producers, the condition of the

markets, and extent to which the same require advertising and research. If the investigation shows that the revenue from the assessments levied is inadequate to accomplish the objects of this chapter, it shall report its findings to the director, showing the necessities of the industry, the probable cost of the required program, and the probable revenue from the existing levy. It may then increase the assessments to be levied to an amount not exceeding two dollars per each two thousand pounds (net weight) of such fruits so contained or packed. [1961 c 11 § 15.28.170. Prior: 1947 c 73 § 25; Rem. Supp. 1947 § 2909–34.]

15.28.175 Promotional printing and literature—Contracts. Promotional printing and literature not restricted by laws relating to public printer, see RCW 15.24.085. Conditions of employment, etc., in contracts, see RCW 15.24.086.

15.28.180 Increase of assessment for a fruit or classification—Exemptions. The same assessment shall be made for each soft tree fruit, except that if a two-thirds majority of the state commodity committee of any fruit recommends in writing the levy of an additional assessment on that fruit, or any classification thereof, for any year or years, the commission may levy such assessment for that year or years up to the maximum of twelve dollars for each two thousand pounds of any fruit except cherries or any classification thereof, as to which the assessment may be increased to a maximum of twenty dollars for each two thousand pounds, and except pears covered by this chapter, as to which the assessment may be increased to a maximum of fourteen dollars for each two thousand pounds: *Provided*, That no increase in the assessment on pears becomes effective unless the increase is first referred by the commission to a referendum by the Bartlett pear growers of the state and is approved by a majority of the growers voting on the referendum. The method and procedure of conducting the referendum shall be determined by the commission. Any funds so raised shall be expended solely for the purposes provided in this chapter and solely for such fruit, or classification thereof.

The commission has the authority in its discretion to exempt in whole or in part from future assessments under this chapter, during such period as the commission may prescribe, any of the soft tree fruits or any particular strain or classification of them. [1983 1st ex.s. c 73 § 1; 1977 ex.s. c 8 § 1; 1965 ex.s. c 43 § 1; 1963 c 51 § 4; 1961 c 11 § 15.28.180. Prior: 1947 c 73 § 26; Rem. Supp. 1947 § 2909–35.]

15.28.190 Deposit of funds—Treasurer's bond. All money collected under the authority of this chapter shall be paid to the treasurer of the commission, deposited by him in banks designated by the commission, and disbursed on its order.

The treasurer shall file with the commission a fidelity bond, executed by a surety company authorized to do

business in this state, in favor of the state and the commission, jointly and severally, in the sum of fifty thousand dollars, and conditioned upon his faithful performance of his duties and his strict accounting of all funds of the commission.

None of the provisions of RCW 43.01.050 shall apply to money collected under this chapter. [1961 c 11 § 15.28.190. Prior: 1947 c 73 § 15, part; Rem. Supp. 1947 § 2909–24, part.]

15.28.200 Use of funds—Contributions. All moneys collected from such levy shall be expended exclusively to effectuate the purposes and objects of this chapter. They shall be generally expended on promotion and improvement of the various commodities approximately in the ratio that funds are derived from such commodities, after deducting suitable amounts for general overhead and basic general research, unless a majority of the functioning state commodity committees consent to a larger expenditure on behalf of any commodity or commodities. Any funds contributed to the commission by any special group or raised by an additional levy on any commodity or classification thereof, shall be expended only in connection with such commodity. [1961 c 11 § 15.28.200. Prior: 1947 c 73 § 19; Rem. Supp. 1947 § 2909–28.]

15.28.210 Records kept—Preservation—Inspection of. Every dealer, handler, and processor shall keep a complete and accurate record of all soft tree fruits handled, shipped, or processed by him. Such record shall be in simple form and contain such information as the commission shall by rule or regulation prescribe. The records shall be preserved by such handler, dealer, and processor for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written request of the commission or its duly authorized agents. [1961 c 11 § 15.28.210. Prior: 1947 c 73 § 20; Rem. Supp. 1947 § 2909–29.]

15.28.220 Returns to commission. Every dealer, handler, and processor shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of soft tree fruits handled, shipped, or processed by him during the period or periods of time prescribed by the commission. Such return shall contain such further information as may be necessary to carry out the objects and purposes of this chapter. [1961 c 11 § 15.28.220. Prior: 1947 c 73 § 21; Rem. Supp. 1947 § 2909–30.]

15.28.230 Due date of assessments—Delinquent penalty. All assessments levied and imposed by this chapter shall be due prior to shipment and shall become delinquent if not paid within thirty days after the time established for such payment according to regulations of the commission. A delinquent penalty shall be payable on any such delinquent assessment, calculated as interest on the principal amount due at the rate of ten percent per annum. Any delinquent penalty shall not be charged

back against the grower unless he caused such delay in payment of the assessment due. [1961 c 11 § 15.28.230. Prior: 1955 c 47 § 2; 1947 c 73 § 22; Rem. Supp. 1947 § 2909-31.]

15.28.240 Collection rules—Use of "stamps". The commission shall by rule or regulation prescribe the method of collection, and for that purpose may require stamps to be known as "Washington state fruit commission stamps" to be purchased from the commission and fixed or attached to the container, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Stamps shall be canceled immediately upon being so attached or fixed, and the date of cancellation shall be placed thereon. [1961 c 11 § 15.28.240. Prior: 1947 c 73 § 23; Rem. Supp. 1947 § 2909-32.]

15.28.250 Failure to pay—Duty of dealer, processor. Unless the assessment has been paid by the grower and evidence thereof submitted by him, the dealer, handler, or processor shall be responsible for the payment of all assessments hereunder on all soft tree fruits handled, shipped, or processed by him but he shall charge the same against the grower, who shall be primarily responsible for such payment. [1961 c 11 § 15.28.250. Prior: 1947 c 73 § 24; Rem. Supp. 1947 § 2909-33.]

15.28.260 Publications by commission—Subscriptions. If the commission publishes a bulletin or other publication, or a section in some established trade publication, for the dissemination of information to the soft tree fruit industry in this state, the first two dollars of any assessment paid annually by each grower, handler, dealer, and processor of such fruit shall be applied to the payment of his subscription to such bulletin or publication. [1961 c 11 § 15.28.260. Prior: 1947 c 73 § 27; Rem. Supp. 1947 § 2909-36.]

15.28.270 Violations—Penalty. Every person shall be guilty of a misdemeanor who:

- (1) Violates or aids in the violation of any provision of this chapter, or
- (2) Violates or aids in the violation of any rule or regulation of the commission. [1961 c 11 § 15.28.270. Prior: 1947 c 73 § 28; Rem. Supp. 1947 § 2909-37.]

15.28.280 Venue of actions—Jurisdiction of courts. Any prosecution brought under this chapter may be instituted or brought in any county in the state in which the defendant or any of the defendants reside, or in which the violation was committed, or in which the defendant or any of the defendants has his principal place of business.

The several superior courts of the state are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof, or of any rule or regulation promulgated by the commission. [1961 c 11 § 15.28.280. Prior: 1947 c 73 § 29; Rem. Supp. 1947 § 2909-38.]

15.28.290 Duty to enforce. It shall be the duty of all state and county law enforcement officers and all employees and agents of the department to aid in the enforcement of this chapter. [1961 c 11 § 15.28.290. Prior: 1947 c 73 § 30; Rem. Supp. 1947 § 2909-39.]

15.28.300 Rules and regulations—Filing—Publication. Every rule, regulation, or order promulgated by the commission shall be filed with the director, and shall be published in a legal newspaper of general circulation in each of the three districts. All such rules, regulations, or orders shall become effective pursuant to the provisions of RCW 34.04.040. [1985 c 469 § 7; 1975 1st ex.s. c 7 § 38; 1961 c 11 § 15.28.300. Prior: 1947 c 73 § 31; Rem. Supp. 1947 § 2909-40.]

15.28.310 Authority to agents of commission to inspect. Agents of the commission, upon specific written authorization signed by the chairman or secretary-manager thereof, shall have the right to inspect the premises, books, records, documents, and all other instruments of any carrier, railroad, truck, boat, grower, handler, dealer, and processor for the purpose of enforcing this chapter and collecting the assessments levied hereunder. [1961 c 11 § 15.28.310. Prior: 1947 c 73 § 32; Rem. Supp. 1947 § 2909-41.]

15.28.900 Preamble. This chapter is passed:

- (1) In the exercise of the police power of the state to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the soft tree fruit industry of the state;
- (2) Because the soft tree fruits grown in Washington collectively comprise one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crops and the expanding and protection of the market for them is of public interest;
- (3) Because it is necessary and expedient to enhance the reputation of Washington soft tree fruits in domestic and foreign markets;
- (4) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington soft tree fruits, and to spread that knowledge throughout the world in order to increase the consumption of Washington soft tree fruits;
- (5) Because Washington grown soft tree fruits are handicapped by high freight rates in competition with eastern and foreign grown soft tree fruits in the markets of the world, and this disadvantage can only be overcome by education and advertising;
- (6) Because the stabilization of the soft tree fruits industry, enlargement of its markets, and the increase of the consumption of soft tree fruits are necessary to assure the payment of taxes to the state and its subdivisions, and to maintain employment and adequate wages for agricultural labor within the state;
- (7) Because many new plantings of soft fruit trees are being made and substantially increased new plantings are expected in the near future as additional land comes under irrigation, and since the soft fruit trees mature quickly, it is conceivable that the industry may become

unstabilized and demoralized by the excess production unless adequate outlets for the crops are provided, in advance of this anticipated production and it is essential that the program herein outlined be adopted for the purposes herein stated to aid in stabilizing the soft tree fruit industry;

(8) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only soft tree fruits of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer thereof, so that they can pay adequate wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and to educate the wholesale and retail trade with reference to the advantages of establishing and maintaining markups that will result in increasing sales to the consumers with consequent benefits to the people of the state of Washington;

(9) To protect the general public by educating it in reference to the various varieties and grades of Washington soft tree fruits, the time to use and consume each variety, and the uses to which each variety should be put. [1961 c 11 § 15.28.900. Prior: 1947 c 73; No RRS.]

15.28.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.28.910. Prior: 1947 c 73 § 33, part; Rem. Supp. 1947 § 2909-42, part.]

Chapter 15.30

CONTROLLED ATMOSPHERE STORAGE OF FRUITS AND VEGETABLES

Sections

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15.30.260	Cooperation, agreements with other governmental agencies.
15.30.900	Fruits and vegetables in storage prior to enactment of chapter.
15.30.910	Severability—1961 c 29.

15.30.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society and association and every officer, agent or employee thereof. This term shall import either the singular or plural, as the case may be.

(4) "Controlled atmosphere storage" means any storage warehouse consisting of one or more rooms, or one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits or vegetables in order that, upon removal, they may be designated as having been exposed to controlled atmosphere. [1961 c 29 § 1.]

15.30.020 Annual license required—Expiration date. It shall be unlawful for any person to engage in the business of operating a controlled atmosphere storage warehouse or warehouses without first obtaining an annual license from the director. Such license shall expire on August 31st of any one year. [1961 c 29 § 2.]

15.30.030 Application for license, contents—Issuance, prerequisites. Application for a license to operate a controlled atmosphere warehouse shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such 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.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(5) The storage capacity of each controlled atmosphere storage warehouse the applicant intends to operate by cubic capacity or volume.

(6) The kind of fruits or vegetables for which the applicant intends to provide controlled atmosphere storage.

(7) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required license fee. [1961 c 29 § 3.]

15.30.040 Annual license fee. The application for an annual license to engage in the business of operating a controlled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee of five dollars. [1961 c 29 § 4.]

15.30.050 Enforcement—Rules authorized, procedure. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purposes. The adoption of rules shall be subject to the provisions of chapter 34.04 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 29 § 5.]

15.30.060 Oxygen content and period to be maintained—Classification of fruits, vegetables as controlled atmosphere stored, time and temperature requirements. The director shall adopt rules:

(1) Prescribing the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse: *Provided*, That such maximum amount of oxygen retained shall not exceed five percent when apples are stored in such controlled atmosphere storage warehouse.

(2) Prescribing the period in which the oxygen content shall be reduced to the amount prescribed in subsection (1) of this section: *Provided*, That such period shall not exceed twenty days when apples are stored in such controlled atmosphere warehouse.

(3) The length of time and the degrees of temperature at which any fruits or vegetables shall be retained in controlled atmosphere storage, before they may be classified as having been stored in controlled atmosphere storage: *Provided*, That such period shall not be less than ninety days for apples. [1967 c 215 § 1; 1961 c 29 § 6.]

15.30.070 License renewal date—Penalty for late renewal, exception. If an application for renewal of the license provided for in RCW 15.30.020 is not filed prior to September 1st of any one year, a penalty of two dollars and fifty cents shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not engaged in the business of operating a controlled atmosphere storage warehouse subsequent to the expiration of his prior license. [1961 c 29 § 7.]

15.30.080 Denial, suspension, revocation of license—Grounds—Hearing required. The director is authorized to deny, suspend or revoke the license provided for in RCW 15.30.020 subsequent to a hearing, in any case in which he finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [1961 c 29 § 8.]

15.30.090 Denial, suspension, revocation of license—Hearings subject to administrative procedure act. All hearings for a denial, suspension or revocation of the license provided for in RCW 15.30.020 shall be subject to the provisions of chapter 34.04 RCW, concerning contested cases, as enacted or hereafter amended. [1961 c 29 § 9.]

15.30.100 Subpoenas—Witnesses and fees. The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents and records, anywhere in the state in any hearing affecting the authority or privilege granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1961 c 29 § 10.]

15.30.110 Issuance of warehouse number—Use of letters "CA"—Marking containers with letters and number. The director when issuing a license to an applicant shall include a warehouse number which shall be preceded by the letters "CA". If the applicant in applying for a license includes a request for a specific warehouse number, the director shall issue such number to the applicant if such number has not been issued to a prior applicant. The letters "CA" and the number issued as provided in this section shall be marked in a manner provided by the director on all containers in which fruits or vegetables subject to the provisions of this chapter are placed or packed. [1961 c 29 § 11.]

15.30.120 Licensee to make daily determination of air components—Record, form, contents. The licensee shall make air component determinations as to the percentage of carbon dioxide, oxygen and temperature at least once each day. A record of such determinations shall be kept on a form prescribed by the director for a period of two years and shall include the following:

- (1) The name and address of the licensee.
- (2) The number of the warehouse and the storage capacity of the warehouse.
- (3) The date of sealing of the warehouse.
- (4) Date of opening of the warehouse.
- (5) A daily record of the date and time of the tests, including the percentage of carbon dioxide, percentage of oxygen and the temperature. [1961 c 29 § 12.]

15.30.130 Identity of fruit and vegetables to be maintained by CA number and inspection number to retail market. The identity of any fruits or vegetables represented as having been stored in a room or warehouse

subject to the provisions of this chapter shall be maintained, by the CA number issued to the licensee in whose warehouse such fruits and vegetables were stored and the state lot inspection number issued by the director for such fruits or vegetables, from the time it leaves such warehouse through the various channels of trade and transportation to the retailer. [1961 c 29 § 13.]

15.30.140 Maturity and condition standards may be higher than for fruit and vegetables not subject to chapter. The director may by rule establish condition and maturity standards for fruits or vegetables subject to the provisions of this chapter which may be higher than maturity and condition standards established for similar grades or classifications of such fruits or vegetables which are not subject to the provisions of this chapter. [1961 c 29 § 14.]

15.30.150 Minimum condition and maturity standards for apples. Minimum condition and maturity standards for apples subject to the provisions of this chapter shall be the U.S. condition and maturity standards for export as provided in 7 Code of Federal Regulations 51.317 on February 21, 1961: *Provided*, That the director may adopt any subsequent amendment to such U.S. condition and maturity standards for export prescribed by the secretary of agriculture of the United States. [1961 c 29 § 15.]

15.30.160 Inspection, certification prior to using "CA" or similar designation—Eradication required, when. No person in this state shall place or stamp the letters "CA" or a similar designation in conjunction with a number or numbers upon any container or subcontainer of any fruits or vegetables, unless the director has inspected such fruits or vegetables and issued a state lot number for such fruits or vegetables in conjunction with a certificate stating their quality and condition, that they were stored in a warehouse licensed under the provisions of this chapter and that they meet all other requirements of this chapter or rules adopted hereunder: *Provided*, That if such fruits or vegetables are not allowed to enter the channels of commerce within two weeks of such inspection or a subsequent similar inspection by the director the letters "CA" and the state lot number shall be eradicated by the licensee. [1961 c 29 § 16.]

15.30.170 Inspection, certification may be requested by financially interested person. Any person financially interested in any fruits or vegetables subject to the provisions of this chapter may apply to the director for inspection and certification as to whether such fruits or vegetables meet the requirements provided for in this chapter or rules adopted hereunder. [1961 c 29 § 17.]

15.30.180 Fees for inspection and certification. The director shall prescribe the necessary fees to be charged to the licensee or owner for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter or rules adopted hereunder. The fees

provided for in this section shall become due and payable by the end of the next business day and if such fees are not paid within the prescribed time, the director may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears: *Provided*, That the director in such instances may demand and collect inspection and certification fees prior to inspecting and certifying any fruits or vegetables for such person. [1961 c 29 § 18.]

15.30.190 Certificate as evidence. Every inspection certificate issued by the director under the provisions of this chapter shall be received in all courts of the state as prima facie evidence of the statement therein. [1961 c 29 § 19.]

15.30.200 Disposition of fees. All moneys collected under the provisions of this chapter for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter shall be handled and deposited in the manner provided for in *chapter 15.16 RCW, as enacted or hereafter amended, for the handling of inspection and certification fees derived for the inspection of any fruits and vegetables. [1961 c 29 § 20.]

**Reviser's note:* "chapter 15.16 RCW" was repealed by 1963 c 122. Later enactment, see chapter 15.17 RCW.

15.30.210 Unlawful sales, acts, or use of words "controlled atmosphere storage" and terms of similar import. It shall be unlawful for any person to sell, offer for sale, hold for sale, or transport for sale any fruits or vegetables represented as having been exposed to "controlled atmosphere storage" or to use any such term or form of words or symbols of similar import unless such fruits or vegetables have been stored in controlled atmosphere storage which meets the requirements of this chapter or rules adopted hereunder. [1961 c 29 § 21.]

15.30.220 Injunctions authorized. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law. [1961 c 29 § 22.]

15.30.230 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1961 c 29 § 23.]

15.30.240 Prior civil or criminal liability not affected. The enactment of this chapter shall not have the effects of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on February 21, 1961. [1961 c 29 § 24.]

15.30.250 Penalties for violating chapter. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however,

any offense committed more than five years after a previous conviction shall be considered a first offense. [1961 c 29 § 25.]

15.30.260 Cooperation, agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of federal government in order to carry out the purpose and provisions of this chapter. [1961 c 29 § 26.]

15.30.900 Fruits and vegetables in storage prior to enactment of chapter. Any fruits or vegetables now in controlled atmosphere storage and removed after February 21, 1961 may be marked, shipped, represented and sold as having been exposed to controlled atmosphere storage if such fruits and vegetables meet the requirements of this chapter and the rules and regulations adopted hereunder. [1961 c 29 § 28.]

15.30.910 Severability—1961 c 29. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1961 c 29 § 27.]

Chapter 15.32

DAIRIES AND DAIRY PRODUCTS

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15.32.790	Deceit relative to milk and cream measures, grades, etc.
15.32.900	Declaration of police power.
15.32.910	Chapter cumulative.

Butter, milk, etc., containers, packages, etc.: Chapter 19.94 RCW.

Food donated to nonprofit organizations: Chapter 69.80 RCW.

15.32.010 Definitions. For the purpose of chapter 15.32 RCW:

"Supervisor" means the supervisor of dairy and livestock;

"Dairy" means a place where milk from one or more cows or goats is produced for sale;

"Creamery" means a structure wherein milk or cream is manufactured into butter for sale;

"Milk plant" means a structure wherein milk is bot-
tled, pasteurized, clarified, or otherwise processed;

"Cheese factory" means a structure where milk is
manufactured into cheese;

"Factory of milk products" means a structure, other than a creamery, milk plant, cheese factory, milk condensing plant or ice cream factory, where milk or any of its products is manufactured, changed, or compounded into another article, or where butter is cut or wrapped; except freezing of ice cream from a mix compounded in a licensed creamery, milk plant, cheese factory, milk condensing plant or ice cream factory;

"Milk condensing plant" means a structure where milk is condensed or evaporated;

"Ice cream factory" means a structure which complies with the sanitary requirements of RCW 15.32.080, where ice cream mix is produced for sale or distribution, and may include freezing such mix into ice cream;

"Counter ice cream freezer" means counter type freezing machines usually operated in retail establishments;

"Sterilized milk" means milk that has been heated under six pounds of steam pressure and maintained thereat for not less than twenty minutes;

"Modified milk" means milk that has been altered in composition to conform to special nutritional requirements;

"Milk product" means an article manufactured or compounded from milk, whether or not the milk conforms to the standards and definitions herein;

"Milk byproduct" means a product of milk derived or made therefrom after the removal of the milk fat or milk solids in the process of making butter or cheese, and includes skimmed milk, buttermilk, whey, casein, and milk powder;

"Butter" means the product made by gathering the fat of milk or cream into a mass containing not less than eighty percent of milk fat, and which also contains a small portion of other milk constituents, with or without harmless coloring matter;

"Renovated butter" means butter that has been reduced to a liquid state by melting and drawing off the liquid or butter oil, and has thereafter been churned or manipulated in connection with milk, cream, or other product of milk;

"Reworked butter" means the product obtained by mixing or rechurning butter made on different dates or at different places: *Provided*, That the mixing of remnants from one day's churning or cutting with butter from the churning of the same creamery on the next day shall not make the product reworked butter;

"Butter substitute" means a compound of vegetable oils with milk fats or milk solids and all compounds of milk fats or milk solids with butter when the compound contains less than eighty percent of milk fat;

"Oleomargarine" means all manufactured substances, extracts, mixtures, or compounds, including mixtures or compounds with butter, known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral, and includes all lard and tallow extracts and mixtures and compounds of tallow, beef fat, suet, lard, lard oil, intestinal fat and offal fat made in imitation or semblance of butter or calculated or intended to be sold as butter;

"Imitation cheese" means any article, substance, or compound, other than that produced from pure milk or from the cream from pure milk, which is made in the semblance of cheese and designed to be sold or used as a substitute for cheese. The use of salt, lactic acid, or pepsin, and harmless coloring matter in cheese shall not render the true product an imitation. Nothing herein shall prevent the use of pure skimmed milk in the manufacture of cheese;

"Milk vendor" or "milk dealer" means any person who sells, furnishes or delivers milk, skimmed milk, buttermilk, or cream in any manner.

All dairy products mentioned in this chapter mean those fit or used for human consumption. [1961 c 11 § 15.32.010. Prior: 1955 c 238 § 71; prior: (i) 1943 c 90 § 1, part; 1933 c 188 § 1, part; 1929 c 213 § 1, part; 1927 c 192 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part. (ii) 1929 c 213 § 6, part; 1927 c 192 § 16, part; 1921 c 104 § 3, part; 1919 c 192 § 41, part; RRS § 6203, part.]

15.32.051 Definitions and standards—Adoption of rules—Repealed statutes continued as rules. The director may, by rule, establish and/or amend definitions and standards for dairy products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for dairy products promulgated by the secretary of the United States department of health, education and welfare: *Provided*, That the director shall at all times provide reasonable standards for ice milk.

The director may adopt any other rules necessary to carry out the purposes of this chapter. The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules, except as otherwise provided in this section.

The definitions constituting sections 15.32.020, 15.32.030, 15.32.040 and 15.32.050, chapter 11, Laws of 1961 and RCW 15.32.020, 15.32.030, 15.32.040 and 15.32.050 hereinabove repealed as statutes are hereby constituted and declared to be operative and to remain in force as the rules of the department of agriculture until such time as amended, modified, or revoked by the director of agriculture. [1963 c 58 § 2.]

Adoption of rules as to imitation of dairy products: RCW 15.36.011.

15.32.060 Insanitary dairies, when. A dairy is deemed insanitary when:

(1) The drinking water for cows or goats is stagnant or polluted; or

(2) The yards are filthy or insanitary, or are the depositories of manure which is allowed to decay or ferment; or

(3) The barn or stable is not provided with suitable floors, gutters and drains, or are not properly sealed from the feed storage; or the interior thereof has not had a coat of lime, whitewash, or paint at least once each year; or at least three square feet of window light is not provided for each cow; or

(4) The milk room provided for cooling, mixing, bottling, canning, separating, or keeping milk, is used for any other purpose; or is not screened against flies or insects; or is located in a dwelling house, barn, or poultry house; or if located in a building where a business, occupation, or trade other than handling, bottling, or processing milk is conducted it is not separated therefrom by a sealed or plastered partition; or has a door leading directly into a barn where cows are kept or milked, except that double doors and a vestibule between is permitted in lieu of an outside door; or is used by a person as living or sleeping quarters; or is occupied by animals or fowl of any kind; or if a drainage system adequate to carry drainage one hundred feet away is not provided; or it is not provided with a floor of concrete or other equally impervious material; or the walls and ceiling are not finished with a smooth surface which must be covered once a year with a coat of lime whitewash or paint; or the walls or floor of the milk room become soiled with manure, urine, dirt or other filth;

(5) Any urinal, privy vault, open cesspool, pig pen, stagnant water, manure accumulation, or other filth is permitted within one hundred feet of any milk room, or within fifty feet of any place where milking is done, except that modern, flush-type toilets are permitted adjacent to milk rooms or barns if they are located in separate, properly ventilated and sealed rooms which do not open into any room where milk is handled;

(6) The person or wearing apparel of any person who comes in contact with milk or milk products becomes soiled or is not washed with reasonable frequency;

(7) Milking stools are not kept clean;

(8) Milking machines or other equipment of any kind which comes in contact with milk, is not thoroughly cleaned and sterilized in the milk room, with boiling water, live steam, or an approved chemical method, after every use thereof; or if the same becomes rusty or insanitary;

(9) The floor of any barn, shed, or stable in which cows or goats are kept or milked, or of a milk room, is so constructed or in such condition as to permit liquids to flow or soak underneath the floor, or among the interstices thereof in such a manner as to cause decay or fermentation to take place; or

(10) If the milk room is not provided with suitable windows or openings permitting the entrance of light and air from the outside of the building without passing through any other portion thereof;

(11) When there is permitted to exist any other cause or thing calculated or tending to render the milk or its products unclean, impure and unhealthy. [1961 c 11 § 15.32.060. Prior: (i) 1943 c 90 § 2, part; 1929 c 213 § 2, part; 1927 c 192 § 2, part; 1919 c 192 § 2, part; Rem. Supp. 1943 § 6165, part. (ii) 1927 c 192 § 20; 1919 c 192 § 73; RRS § 6235.]

15.32.070 Closing of insanitary dairies. Whenever any dairy becomes insanitary within the meaning of RCW 15.32.060 it may be closed until such time as the condition is remedied, and it is unlawful to sell milk or milk products from any closed or insanitary dairy. [1961

c 11 § 15.32.070. Prior: 1943 c 90 § 2, part; 1929 c 213 § 2, part; 1927 c 192 § 2, part; 1919 c 192 § 2, part; Rem. Supp. 1943 § 6165, part.]

15.32.080 Insanitary milk plants. A structure or place where milk or cream is processed or manufactured into other products, or where handled, stored, or kept for sale shall be deemed insanitary in the following circumstances:

(1) If milk or cream is received or kept which has reached a stage of putrefactive fermentation;

(2) If milk or cream is received or kept in containers that have not been sterilized with boiling water or live steam after each delivery;

(3) If utensils and apparatus that come in contact with milk or its products in the process of manufacture are not thoroughly washed and sterilized by means of boiling water or live steam after each using;

(4) If the floor is such as to permit liquids to soak into the interstices thereof in such manner as to permit fermentation and decay, or such as may not be readily kept free from dirt and filth;

(5) If drains are not provided that will convey refuse milk, water, and sewage to a point at least fifty yards distant;

(6) If a cesspool, privy vault, hog yard, slaughterhouse, henhouse, manure, or decaying vegetable or animal matter that will produce foul odors is permitted to exist within such distance as will permit the odors therefrom to reach such place;

(7) If it lacks sufficient light and air to secure good ventilation;

(8) If in a building used in connection therewith any insects, vermin, or other species of animal life are permitted;

(9) If upon the floor or walls thereof, any milk or its products or any other filth is allowed to accumulate, ferment, or decay;

(10) If the person or clothing of a person coming in contact with milk or milk products therein is unclean;

(11) If there is permitted to exist any other cause or thing tending to render the milk or its products produced, kept, handled, or manufactured therein unclean, impure, and unhealthy. [1961 c 11 § 15.32.080. Prior: 1923 c 27 § 1; 1919 c 192 § 3; RRS § 6166.]

15.32.090 Duties of the director. The director shall:

(1) Enforce all laws relating to the production or manufacture, sale or distribution of milk and milk products, and cause to be prosecuted persons suspected of violations thereof. The attorney general, and prosecuting attorney of any county shall, upon request of the director, render him legal assistance in performing such duties;

(2) Adopt and promulgate rules and regulations for the issuance of licenses required of persons who handle milk or milk products; for hearing complaints against such licensees; and the revocation of such licenses;

(3) Inspect all structures and places where milk or milk products are produced, manufactured, processed, stored, or sold, and all vehicles used in the transportation

thereof, and all apparatus used in testing or grading milk or cream, and conduct revisory tests when there is reason to believe that milk or cream for sale, is not being accurately tested, graded, measured, or weighed. Defective apparatus shall be condemned;

(4) Inspect any milk or milk products, and imitations thereof, which he may suspect of being impure, adulterated, or counterfeit, and prosecute any persons engaged in the manufacture or sale of such products in violation of law.

Said duties may be performed by the director, or supervisor or any inspector of the department. [1961 c 11 § 15.32.090. Prior: (i) 1919 c 192 § 34; RRS § 6196. (ii) 1919 c 192 § 35; RRS § 6197. (iii) 1919 c 192 § 36; RRS § 6198. (iv) 1927 c 192 § 13; 1919 c 192 § 37; RRS § 6199. (v) 1927 c 192 § 14; 1919 c 192 § 38; RRS § 6200. (vi) 1927 c 192 § 15, part; 1919 c 192 § 39, part; RRS § 6201, part. (vii) 1919 c 192 § 75; RRS § 6237. (viii) 1919 c 192 § 81; RRS § 6243. (ix) 1899 c 43 § 10; 1895 c 45 § 10; RRS § 6255.]

15.32.100 Licenses of milk vendors, dealers—Fee—Contents—Duration—Revocation. Every person who sells, offers or exposes for sale, barter, or exchanges any milk or milk product as defined by rule under chapter 15.36 RCW must have a milk vendor's license to do so: *Provided*, That such license shall not include retail stores or restaurants which purchase milk prepackaged or bottled elsewhere for sale at retail or establishments which sell milk only for consumption in such establishment. Such license, issued by the director on application and payment of a fee of two dollars, shall contain the license number, and name, residence and place of business, if any, of the licensee. It shall be non-transferable, shall expire June 30th subsequent to issue, and may be revoked by the director, upon reasonable notice to the licensee, for any violation of or failure to comply with any provision of this chapter or any rule or regulation, or order of the department, or any officer or inspector thereof. [1983 c 3 § 20; 1963 c 58 § 3; 1961 c 11 § 15.32.100. Prior: (i) 1929 c 213 § 5; 1927 c 192 § 12; 1919 c 192 § 31; 1899 c 43 § 25; RRS § 6193. (ii) 1923 c 27 § 9; 1919 c 192 § 32; 1899 c 43 § 25; RRS § 6194.]

15.32.110 Plant licenses—Fee—Revocation. Every creamery, milk plant, shipping station, milk-condensing plant, factory of milk products, and other person who receives or purchases milk or cream in bulk and by weight or measure or upon the basis of milk fat contained therein shall obtain annually a license to do so. The license shall be issued by the director upon payment of ten dollars and his being satisfied that the building or premises where the milk or cream is to be received is maintained in a sanitary condition in accordance with the provisions of this chapter; except, such license shall not be required of persons purchasing milk or cream for their own consumption nor of hotels, restaurants, boarding houses, eating houses, bakeries, or candy manufacturing plants.

The license shall expire on June 30th subsequent to date of issue unless sooner revoked by the director, upon reasonable notice to the licensee, for a failure to comply with the provisions of this chapter, and the rules and regulations issued hereunder.

A licensee under this section shall not be required to obtain a milk vendor's license. [1961 c 11 § 15.32.110. Prior: (i) 1927 c 192 § 11; 1923 c 27 § 8; 1919 c 192 § 29; RRS § 6192. (ii) 1919 c 192 § 33; RRS § 6195.]

15.32.120 Adulteration of milk and milk products. Adulterated within the meaning of this chapter means:

(1) Milk, skimmed milk, buttermilk or cream which has been reduced, altered or changed in any respect by the addition of water or other substance: *Provided*, That no milk, skimmed milk, buttermilk or cream shall be deemed to be adulterated if such milk, skimmed milk, buttermilk or cream contains any added ingredient or substance in the amount and kind prescribed or allowed by a rule or regulation promulgated by the director subsequent to a public hearing pursuant to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended; and

(2) Milk and milk products which do not conform to the definitions and standards set forth in RCW 15.32-.010 through 15.32.050. [1969 ex.s. c 102 § 5; 1961 c 11 § 15.32.120. Prior: (i) 1919 c 192 § 67; RRS § 6229. (ii) 1919 c 192 § 69; RRS § 6231.]

Reviser's note: RCW 15.32.020 through 15.32.050 were repealed by 1963 c 58 § 1, but remain in force as departmental rules until amended, modified or revoked by the director of agriculture, see RCW 15.32.051.

15.32.130 Unlawful sales and service of milk, milk products. No person shall:

(1) Serve as milk, cream or a milk product for human consumption any substance which is adulterated within the meaning of this chapter; nor

(2) Serve for human consumption in any place where meals are served, either as part of a meal or otherwise, ice cream, nut ice cream, fruit ice cream, ice milk or any substance resembling ice cream or ice milk, which is adulterated within the meaning of this chapter; nor

(3) Sell or offer for sale butter, cheese, or condensed milk which is adulterated within the meaning of this chapter; except that milk from cows which have reacted to tuberculin tests but exhibit no physical symptoms of disease, may be used to make butter, cheese, or condensed milk if such milk has been pasteurized or sterilized as required by the provisions of this chapter and a permit to do so has been issued by the director or departmental inspector; nor

(4) Add to any milk, cream, or condensed milk any gelatine, gum or other substance for the purpose of increasing the apparent richness thereof; except that nothing in this chapter shall be construed as prohibiting the use of harmless coloring matter and common salt in making butter or cheese, or harmless coloring or flavoring matter in ice cream or ice milk, or rennet, lactic acid or pepsin in making cheese. [1961 c 11 § 15.32.130. Prior: (i) 1919 c 192 § 47; RRS § 6209. (ii) 1919 c 192

§ 58; RRS § 6220. (iii) 1919 c 192 § 62; RRS § 6224. (iv) 1919 c 192 § 66; 1907 c 211 § 1; 1905 c 50 § 1; 1901 c 94 § 1; RRS § 6228. (v) 1919 c 192 § 68; RRS § 6230.]

15.32.140 Impure milk and cream. Milk or sweet cream which is not free from foreign substances, coloring matter, or preservatives, pus cells or blood cells, or which contains more than one hundred thousand bacteria or germs of all kinds to the cubic centimeter or which has been infected by or exposed to any contagious or infectious disease, or which has not cooled to a temperature of fifty-five degrees Fahrenheit within thirty minutes after being drawn or separated, or any pasteurized milk that contains in excess of twenty-five thousand bacteria per cubic centimeter in the finished product, shall be deemed impure, unwholesome, and adulterated. [1961 c 11 § 15.32.140. Prior: 1929 c 213 § 12; 1927 c 192 § 19; 1919 c 192 § 70; RRS § 6232.]

15.32.150 Sale of adulterated or impure products prohibited. It is unlawful to manufacture, sell, offer for sale, or deliver any unclean, impure, or adulterated milk or milk product or any product prepared therefrom. Milk, cream, or milk products when unfit for human consumption may be condemned, destroyed, or rendered unusable for human consumption. [1961 c 11 § 15.32.150. Prior: 1929 c 213 § 8; 1923 c 27 § 10; 1919 c 192 § 48; RRS § 6210.]

15.32.160 Sale of products from diseased animals prohibited—Exception. It is unlawful to sell, offer for sale, or deliver:

(1) Milk or products produced from milk from cows or goats affected with disease or of which the owner thereof has refused official examination and tests for disease: or

(2) Colostrum milk, meaning that produced within ten days before or seven days after parturition, except that colostrum milk from cows that have been tested for brucellosis within sixty days of parturition may be made available to persons having multiple sclerosis, or other persons acting on their behalf, who, at the time of the initial sale, present a form, signed by a licensed physician, certifying that the intended user has multiple sclerosis and that the user releases the provider of the milk from liability resulting from the consumption of the milk. Colostrum milk provided under this section is exempt from meeting the standards for grade A raw milk required by chapter 15.36 RCW.

(3) The department of agriculture shall adopt rules to carry out this section. The rules shall include but not be limited to establishing standards requiring hyper-immunization. [1981 c 321 § 1; 1961 c 11 § 15.32.160. Prior: 1929 c 213 § 9; 1919 c 192 § 49; RRS § 6211.]

15.32.170 Skimmed milk, labels—Sale sign. Milk from which the cream has been removed or contains less than three and twenty-five one hundredths percent milk fat is skimmed milk, and may be sold, offered for sale and delivered only in containers labeled on the outside

with the words "skimmed milk" in black letters at least one inch high.

Skimmed milk, as so defined, may not be served in any place which serves meals for compensation or sells food for consumption on the premises unless there is conspicuously displayed at all times in full view of the public a durable sign bearing the words "skimmed milk sold here" in letters at least one inch high. [1961 c 11 § 15.32.170. Prior: (i) 1919 c 192 § 51; 1899 c 43 § 26; RRS § 6213. (ii) 1919 c 192 § 52; RRS § 6214.]

15.32.180 Temperatures for milk and cream. All milk and sweet cream shall be cooled in the dairy where it is produced to a temperature of not more than sixty degrees Fahrenheit within thirty minutes after the same is drawn from the cows or goats, or separated, and shall not before being delivered to the milk plant, creamery, cheese factory, factory of milk products, or other place where the same is to be distributed, bottled, pasteurized or manufactured be permitted to reach a temperature above sixty degrees Fahrenheit, and all such milk and cream shall thereafter be maintained at a temperature not to exceed fifty degrees Fahrenheit until delivered to the consumer: *Provided*, That nothing in this section shall be deemed applicable to milk or cream while being pasteurized. [1961 c 11 § 15.32.180. Prior: 1949 c 168 § 21; 1929 c 213 § 10; 1923 c 27 § 11; 1919 c 192 § 53; Rem. Supp. 1949 § 6215.]

15.32.190 Bottling of milk, skimmed milk, buttermilk, cream. Milk, skimmed milk, buttermilk or cream shall not be bottled, or transferred from one container to another, in the open air or in or upon any vehicle.

Such bottling or transferring must be done in a milk room, creamery, milk plant, or milk storage place, which is maintained in a sanitary condition as required by this chapter. [1961 c 11 § 15.32.190. Prior: 1933 c 188 § 4; 1919 c 192 § 54; RRS § 6216.]

15.32.200 Sterilizing containers. All containers of milk, cream, ice cream, or ice milk, intended for human consumption, received from a common carrier shall be thoroughly sterilized with boiling water or live steam before they are returned to the consignor or a common carrier. Every vendor who receives such containers from consumers shall so sterilize the same before returning them to the dealer or distributor. [1961 c 11 § 15.32.200. Prior: (i) 1919 c 192 § 5; RRS § 6168. (ii) 1919 c 192 § 6; RRS § 6169.]

15.32.220 Bottle cap labeling—Violation, misdemeanor. Any person who sells or offers for sale milk or cream in bottles with caps which fail to have the name of the owner inscribed thereon, or which indicate a quality that cannot be determined by laboratory, chemical or bacteriological examination, or in any other way wrongfully or fraudulently brands the same as to name or otherwise, for the purpose of inducing a sale, shall be guilty of a misdemeanor. [1961 c 11 § 15.32.220. Prior: (i) 1929 c 213 § 17; 1911 c 39 § 1; RRS § 6282. (ii)

1911 c 39 § 2; RRS § 6283. (iii) 1911 c 39 § 3; RRS § 6284.]

15.32.230 Separators—Cleaning—Kept in milk room. Every cream separator from which milk or cream is sold or offered for sale shall be thoroughly cleaned within three hours after each use and kept clean until the next use; and shall be kept in a milk room, as herein defined, or a room separated from the place where cows are kept by tightly sealed or plastered partitions having no openings.

No person shall sell or offer for sale milk or cream from a separator which fails to conform to this section. [1961 c 11 § 15.32.230. Prior: (i) 1919 c 192 § 8; RRS § 6171. (ii) 1923 c 27 § 2, part; 1919 c 192 § 9, part; RRS § 6172, part.]

15.32.240 Milk and cream at dairy—Kept in milk room. While at a dairy, milk and cream must at all times be kept in a milk room, as herein defined. [1961 c 11 § 15.32.240. Prior: 1923 c 27 § 2, part; 1919 c 192 § 9, part; RRS § 6172, part.]

15.32.250 Protection against flies, filth. No milk or milk product may be offered for sale unless it is kept properly protected from flies, dust, dirt, or other injurious contamination. [1961 c 11 § 15.32.250. Prior: 1919 c 192 § 4; RRS § 6167.]

15.32.260 Sanitary handling of shipments. Milk and milk products when being transported shall be kept in a sanitary condition, and shall not be exposed to contamination or allowed to remain where it or its container is exposed to the direct rays of the sun. [1961 c 11 § 15.32.260. Prior: 1919 c 192 § 7; RRS § 6170.]

15.32.270 Vehicles—Marking, coverings. All vehicles in or from which milk, skimmed milk, buttermilk, butter, cream, ice cream, or ice milk is gathered, sold, or delivered shall have the name and address of the owner plainly painted thereon, on both sides, in letters not less than three inches high and not less than one and one-half inches wide. Between the first day of May and the thirtieth day of September, such vehicles shall be equipped with a covering which will adequately protect the products from the heat of the sun. [1961 c 11 § 15.32.270. Prior: (i) 1919 c 192 § 55; RRS § 6217. (ii) 1919 c 192 § 61; RRS § 6223.]

15.32.280 "Certified" milk sale regulation. No person selling, offering for sale, or exchanging any milk, cream or milk product shall represent the same as being "certified" unless it has been certified by the city or county health officer or county medical society, according to the rules and regulations prescribed by the American association of medical commissions. [1961 c 11 § 15.32.280. Prior: 1919 c 192 § 57; RRS § 6219.]

15.32.300 "Ice milk" serving, regulation. Any person serving ice milk shall display in a conspicuous place a sign containing the words "ice milk served here" in plain gothic type not less than two inches high. [1961 c 11 §

15.32.300. Prior: 1955 c 238 § 77; prior: 1943 c 90 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part.]

15.32.310 Malted milk—Use not adulteration. The use of malted milk or substances which conform to the standards herein prescribed for malted milk, is not adulteration, and such malted milk may be sold or served with milk or milk products, or separately, provided it is sold or served as such and not as pure milk. [1961 c 11 § 15.32.310. Prior: 1919 c 192 § 50; RRS § 6212.]

15.32.330 Butter labeling—Violation, misdemeanor. Prints of butter in sizes of two pounds or less shall not be sold unless they are plainly labeled with the name or official number of the manufacturer, jobber or retailer thereof. Persons who violate this section shall be guilty of a misdemeanor. Possession of butter with intent to sell not so wrapped and labeled is prima facie evidence of guilt. [1961 c 11 § 15.32.330. Prior: 1933 c 188 § 5; RRS § 6225-1.]

15.32.340 Butter, milk, substitutes—Use of names restricted. No person shall use the words "butter," "creamery," "dairy" or "butterine," or any picture or representation of a cow, in any advertisement, sign or card relating to or in connection with the sale, serving or furnishing of oleomargarine or other substance designed as a substitute for or an imitation of butter, or of milk from which the milk fat has been removed and vegetable or other oil substituted therefor. [1961 c 11 § 15.32.340. Prior: 1919 c 192 § 45; RRS § 6207.]

15.32.360 "Renovated butter"—Regulations—Penalty. No person shall sell, offer for sale, or possess with intent to sell any process butter unless the words "renovated butter" are marked in ink on the side of the package in capital letters one inch high and one-half inch wide. No retailer shall sell process butter unless a card bearing the words "renovated butter" is displayed on the package from which he is selling so that it may be easily read.

Whoever violates the provisions of this section is guilty of a misdemeanor and shall be fined for each offense not less than twenty-five nor more than one hundred dollars, or imprisoned for not less than one nor more than six months, or by both fine and imprisonment. [1961 c 11 § 15.32.360. Prior: 1899 c 43 § 30; RRS § 6251.]

15.32.380 "Washington creamery butter", "reworked butter"—Use of. No person shall:

(1) Use the words "Washington creamery butter" as a brand, emblem or trademark upon any butter, or imitation thereof, or substance resembling butter, or upon any container of any such product; or

(2) Sell, offer for sale or possess with intent to sell reworked butter unless on the side of the package is marked with ink the words "reworked butter" in capital letters one inch high and one-half inch wide. [1961 c 11

§ 15.32.380. Prior: 1921 c 104 § 5; 1919 c 192 § 63; 1899 c 43 §§ 29, 30; RRS § 6225.]

15.32.390 "Pasteurization", "pasteurize" and similar terms defined. "Pasteurization," "pasteurize" and similar terms refer to the process of heating every particle of milk or milk products to at least one hundred forty-five degrees Fahrenheit, and holding at such temperature for at least thirty minutes, or to at least one hundred sixty-one degrees Fahrenheit, and holding at such temperature for at least fifteen seconds in approved and properly operated equipment under the provisions of this chapter: *Provided*, That nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated to be equally efficient and which is approved by the director. [1963 c 58 § 5; 1961 c 11 § 15.32.390. Prior: 1955 c 238 § 81; prior: (i) 1949 c 168 § 20; 1943 c 90 § 3; 1927 c 192 § 3; 1923 c 27 § 4; 1919 c 192 § 11; Rem. Supp. 1949 § 6174. (ii) 1919 c 192 § 13; RRS § 6176.]

15.32.400 Pasteurization apparatus, thermometers—Records. Every pasteurizing plant or apparatus shall be equipped with a device which will insure the maintenance of the temperature at the degrees and for the periods herein required, and with separate thermometers approved by the director, for indicating and recording the temperature degrees and holding periods.

Such thermometer records shall be kept for two months or delivered to the director, and shall be at all times open to inspection by the director and all officials charged with enforcing the laws and ordinances relating to milk or milk products or public health. [1961 c 11 § 15.32.400. Prior: (i) 1919 c 192 § 14; RRS § 6177. (ii) 1933 c 188 § 3; 1929 c 213 § 3; 1919 c 192 § 15; RRS § 6178. (iii) 1919 c 192 § 16; RRS § 6179. (iv) 1919 c 192 § 40; RRS § 6202.]

15.32.410 Pasteurization only at butter and cheese plant. All milk or cream used in the manufacture of pasteurized butter or cheese shall be pasteurized only in the plant where the butter or cheese is manufactured. [1961 c 11 § 15.32.410. Prior: 1919 c 192 § 12; RRS § 6175.]

15.32.420 "Pasteurized"—Use of regulated. No person shall use the word "pasteurized" in connection with the sale, designation, advertising, labeling, or billing of milk, cream, or any milk product unless the same and all milk products used in the manufacture thereof consist exclusively of milk, skimmed milk, or cream that has been pasteurized. [1961 c 11 § 15.32.420. Prior: 1919 c 192 § 71; RRS § 6233.]

15.32.430 Cattle breed name—Use in trade—Penalty. No person shall without permission, use in his corporate, firm, or trade name, brand, or advertising, the name of any breed of dairy cattle unless the milk sold, offered for sale, or advertised, is produced entirely from

a herd, each cow of which possesses more than fifty percent of the blood of the breed of cattle so named: *Provided*, That milk solids, as defined by the department of agriculture, added to nonfat milk, skim milk, and low-fat milk as defined by the department of agriculture shall not be subject to such breed requirements.

Any person desiring to use the name of a breed of dairy cattle in connection with the sale of his milk shall make application to the supervisor so to do, and upon a sufficient showing the supervisor may grant permission.

Any person violating this section shall be punished by a fine of not less than twenty-five dollars for the first offense and not less than fifty nor more than one hundred dollars for each subsequent offense. [1973 c 31 § 1; 1961 c 11 § 15.32.430. Prior: (i) 1933 c 23 § 1; RRS § 6260-1. (ii) 1933 c 23 § 2; RRS § 6260-2. (iii) 1933 c 23 § 3; RRS § 6260-3.]

15.32.440 Brands—Registration—Fee—Use.

A person engaged in the manufacture, sale, or distribution of milk or milk products may adopt a brand of ownership which may consist of a name, design, or mark, and may upon the payment of a fee of fifteen dollars, file with the director an application for the exclusive right to the use thereof. The application shall contain the name and address of the applicant, a description of the brand proposed and the use to be made thereof. The director shall refuse the application if the brand is the same or so nearly similar to any brand theretofore registered, as to be misleading. Otherwise the application shall be granted and such fact, together with a description of the brand, shall be entered in a register to be kept by the director. A brand must be stamped, embossed or affixed by means of a metal plate on each container, or in the case of wooden containers must be burned therein. Upon the sale of a container the brand thereon shall become void. [1961 c 11 § 15.32-440. Prior: (i) 1927 c 192 § 22, part; 1923 c 27 § 12, part; 1919 c 192 § 86, part; 1915 c 101 § 1, part; RRS § 6259, part. (ii) 1915 c 101 § 2; RRS § 6260.]

15.32.450 Brands, branded containers—Unlawful use of—Seizure authorized. It shall be unlawful for a person other than the registered owner thereof, to possess for sale, barter, or use such a branded container, and possession by any junk dealer or vendor shall be prima facie evidence of possession for sale, barter, or use. When a branded container is in the possession of a person other than the registered owner, the director may seize and hold it until it is established to his satisfaction that such possession is lawful. No person, other than the owner, shall deface or remove a brand, or adopt a registered brand of another, or use a branded container, except to transport dairy products to and from the owner of the container. [1961 c 11 § 15.32.450. Prior: (i) 1927 c 192 § 22, part; 1923 c 27 § 12, part; 1919 c 192 § 86, part; 1915 c 101 § 1, part; RRS § 6259, part. (ii) 1915 c 101 § 3; RRS § 6261. (iii) 1927 c 192 § 22a; 1915 c 101 § 4; RRS § 6262. (iv) 1927 c 192 § 22b; 1915 c 101 § 5; RRS § 6263.]

15.32.460 Branded containers—Return—Expense. Any person receiving dairy products in containers bearing registered brands shall return them to the rightful owners. The inspectors shall seize branded containers not rightfully used and return them to the person in whose name they are registered. Any expense in transporting seized containers shall be paid by the owner. Neither the director nor any person who returns such containers shall be liable for any lost in transportation. [1961 c 11 § 15.32.460. Prior: 1927 c 192 § 23; 1919 c 192 § 87; 1915 c 101 § 6; RRS § 6264.]

15.32.470 Butter scored by director—Canceling brand. The director may score the butter made by a creamery and his score shall be final. He shall cancel any brand issued to a creamery when the butter manufactured therein does not score ninety points. [1961 c 11 § 15.32.470. Prior: (i) 1905 c 92 § 2; RRS § 6252. (ii) 1905 c 92 § 3; RRS § 6253.]

15.32.480 Branding cheese—Exceptions. Every person who manufactures cheese shall, before removing it from the factory, brand it on the bandage or container with his name and address and the words "full cream cheese," or "half skim cheese," or "quarter skim cheese," or "skim cheese," as the case may be, according to the definitions and standards established in this chapter based upon the percentage of milk fat and solids contained in the cheese. Such brand shall be in plain, uncondensed gothic type not less than one-half inch high, and printed in such a manner that it cannot be readily obliterated.

The provisions of this chapter shall not apply to cheese commonly known as "Edam," "Pineapple," "Brickstein," "Limburger," "Swiss," or other hand-made cheese not made by the ordinary cheddar process. [1961 c 11 § 15.32.480. Prior: 1927 c 192 § 17, part; 1919 c 192 § 64, part; 1897 c 15 § 2, part; 1895 c 45 § 3, part; RRS § 6226, part.]

15.32.490 "Imitation cheese" branded. Every person who manufactures an imitation of or substitute for cheese shall, before it is removed from his factory distinctly and durably brand it with the words "imitation cheese," and on every container thereof print his name and address in plain, uncondensed gothic letters not less than one inch high in such manner that they cannot be readily obliterated. [1961 c 11 § 15.32.490. Prior: 1919 c 192 § 46, part; RRS § 6208, part.]

15.32.500 Brand violations —Sale as knowledge. Failure to brand products as required in RCW 15.32.480 and 15.32.490, and the offering for sale, selling, or otherwise disposing of such products when unbranded, shall constitute violations of this chapter. Selling such unbranded products constitutes knowledge on the part of the seller that the same is not full cream cheese. [1961 c 11 § 15.32.500. Prior: (i) 1919 c 192 § 46, part; RRS § 6208, part. (ii) 1927 c 192 § 17, part; 1919 c 192 § 64, part; 1897 c 15 § 2, part; 1895 c 45 § 3, part; RRS §

6226, part. (iii) 1927 c 192 § 18; 1919 c 192 § 65; RRS § 6227.]

15.32.510 Inspectors—Appointment—Qualifications—Powers. The director or a county or city or town may appoint one or more inspectors of milk, dairies, and dairy products, who are graduates of a recognized dairy school, or have completed a college course in dairying.

The inspectors may enter any place where milk and its products are stored and kept for sale and any conveyance used to transport milk or cream, and take samples for analysis: *Provided*, That this shall not apply to samples of milk or cream taken for bacteriological examination. [1961 c 11 § 15.32.510. Prior: (i) 1929 c 213 § 13; 1907 c 234 § 1; RRS § 6267. (ii) 1929 c 213 § 14; 1907 c 234 § 2; RRS § 6268.]

15.32.520 Milk and cream analysis. The chemist of any state institution shall correctly analyze samples of milk or cream sent him by a city milk inspector and report to the inspector promptly the result of the analysis, without extra compensation, or charge to the city.

A bacteriologist or chemist employed by a city may analyze milk for standard of quality, adulteration, contamination, and unwholesomeness, and his analysis shall have the same effect as one made by a chemist of a state institution. [1961 c 11 § 15.32.520. Prior: 1907 c 234 § 14; RRS § 6280.]

15.32.530 Analysis—Report of by inspector—Time limit. An inspector or any state or city officer who obtains a sample of milk for analysis, shall within ten days after obtaining the result of the analysis, send the result to the person from whom the sample was taken or to the person responsible for the condition of the milk. [1961 c 11 § 15.32.530. Prior: 1907 c 234 § 12; RRS § 6278.]

15.32.540 Prerequisite to prosecution for quality. A person is not liable to prosecution because the milk produced by him is not of good standard quality unless the milk was taken upon his premises or while in his possession or under his control by an inspector or his agent and a sealed sample thereof given to him. [1961 c 11 § 15.32.540. Prior: 1907 c 234 § 11; RRS § 6277.]

15.32.550 Imitation seal, altering samples, violations—Penalty. Any person who makes or causes to be made, or uses or possesses, an imitation of a seal used by a person engaged in the inspection of milk, or who alters or tampers with a sample of milk or milk products taken or sealed by an inspector, shall be punished by a fine of one hundred dollars or imprisonment for not less than three nor more than six months. [1961 c 11 § 15.32.550. Prior: 1907 c 234 § 9; RRS § 6275.]

15.32.560 Connivance by inspector or agent—Penalty. An inspector or his agent who wilfully connives at or assents to a violation of any provision of RCW 15.32.510 to 15.32.550, inclusive, or a person who interferes with an inspector or his agent in the performance

of his duties, shall be punished by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment for not less than thirty nor more than sixty days. [1961 c 11 § 15.32.560. Prior: 1907 c 234 § 10; RRS § 6276.]

15.32.570 Quarantine, removal of container from. No person shall remove from a place under quarantine a container which has been or is to be used to contain milk, skimmed milk, buttermilk, cream, ice cream, or ice milk, without permission of the health officer in charge. [1961 c 11 § 15.32.570. Prior: 1919 c 192 § 56; RRS § 6218.]

15.32.580 Dairy technician's license—Required of testers, samplers, graders, and pasteurizers—Examinations. Any person who tests milk or cream or the fluid derivatives thereof, purchased, received, or sold on the basis of milk fat, nonfat milk solids, or other components contained therein, or who takes samples of milk or cream or fluid derivatives thereof, on which sample tests are to be made as a basis of payment, or who grades, weighs, or measures milk or cream or the fluid derivatives thereof, the grade, weight, or measure to be used as a basis of payment, or who operates equipment wherein milk or products thereof are pasteurized must hold a dairy technician's license. Such license shall be limited to those functions which the licensee has been found qualified by examination to perform. Before issuing the license the director shall examine the applicant as to his qualifications for the functions for which application has been made. [1963 c 58 § 6; 1961 c 11 § 15.32.580. Prior: 1943 c 90 § 4; 1927 c 192 § 8; 1923 c 27 § 7; 1919 c 192 § 26; Rem. Supp. 1943 § 6189.]

15.32.582 Dairy technician's license—Application for license—Temporary permits. Application for a license as a dairy technician to perform one or more of the functions of a tester, sampler, weigher, grader, or pasteurizer shall be made upon forms to be provided and furnished by the director, and shall be filed with the department. The director may issue a temporary permit to the applicant to perform one or more of the functions of a tester, sampler, weigher, grader, or pasteurizer for such period as may be prescribed and stated in said permit, not to exceed sixty days, but such permit shall not be renewed so as to extend the period beyond sixty days. [1963 c 58 § 7; 1961 c 11 § 15.32.582. Prior: 1943 c 90 § 5; 1927 c 192 § 9; 1919 c 192 § 27; Rem. Supp. 1943 § 6190.]

15.32.584 Dairy technician's license—Fees—Duration and renewal—Denial, suspension, revocation. The initial application for a dairy technician's license shall be accompanied by the payment of a license fee of ten dollars. Where such license is renewed and it is not necessary that an examination be given the fee for renewal of the license shall be five dollars. All dairy technicians' licenses shall be renewed on or before January 1, 1964 and every two years thereafter. The director is

authorized to deny, suspend, or revoke any dairy technician's license subject to a hearing if the licensee has failed to comply with the provisions of this chapter, or has exhibited in the discharge of his functions any gross carelessness or lack of qualification, or has failed to comply with the rules and regulations adopted under authority of this chapter. All hearings for the suspension, denial, or revocation of such license shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning contested cases. [1963 c 58 § 8; 1961 c 11 § 15.32.584. Prior: 1943 c 90 § 6; 1927 c 192 § 10; 1919 c 192 § 28; Rem. Supp. 1943 § 6191.]

15.32.590 Tests, etc., by licensed dairy technicians—Records—Inspection of. Licensed dairy technicians shall personally take all samples, conduct all tests, and determine all weights and grades of milk or cream bought, sold, or delivered upon the basis of weight or grade or on the basis of the milk fat, nonfat milk solids, or other components contained therein. Each licensee shall keep a carbon copy of every original report of each test, weight, or grade made by him for a period of two months after making same, in a locked container, but subject to inspection at all times by the director or his agent. [1963 c 58 § 9; 1961 c 11 § 15.32.590. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188, part.]

Penalty for violation of this section: RCW 15.32.610.

15.32.600 Dairy technicians—Personal responsibility. Each dairy technician shall be personally responsible to any person injured through his careless, negligent, or unskillful operation, or any fraudulent, intentionally inaccurate, or manipulated report. [1963 c 58 § 10; 1961 c 11 § 15.32.600. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188, part.]

15.32.610 Employment of unlicensed person as dairy technician—Offenses concerning examination of reports—Penalty. No person shall employ a tester, sampler, weigher, grader, or pasteurizer who is not licensed as a dairy technician; or refuse to allow or fail to assist the director or his agent in the examination of the reports referred to in RCW 15.32.590.

Whoever violates the provisions of this section or RCW 15.32.590 may be fined not less than twenty-five nor more than one hundred dollars, and his license hereunder revoked. [1963 c 58 § 11; 1961 c 11 § 15.32.610. Prior: 1927 c 192 § 7, part; 1923 c 27 § 6, part; 1919 c 192 § 25, part; RRS § 6188.]

15.32.620 Sample taking—Thorough mixing—Unfair samples. Before taking a sample of milk or cream for testing, weighing or grading the licensee shall thoroughly mix the shipment to be sampled until it is of uniform consistency. The shipment of each individual shall be treated separately, and a sample shall be taken from each container in the shipment.

No unfair, fraudulent or manipulated sample shall be taken or returned. [1961 c 11 § 15.32.620. Prior: (i) 1927 c 192 § 5; 1919 c 192 § 21; RRS § 6184. (ii) 1929 c 213 § 4; 1919 c 192 § 23; RRS § 6186.]

15.32.630 Adoption of rules relating to analysis of milk or cream or fluid derivatives thereof. The director may, by rule, establish and/or amend methods, procedures, equipment, and standards to be used and followed in the grading, sampling, weighing, measuring, or testing of milk or cream or the fluid derivatives thereof when the results of such functions are to be used as the basis of payment for milk or cream or the fluid derivatives thereof. Such methods, procedures, equipment, and standards shall conform insofar as practicable with the methods, procedures, equipment, and standards in the latest edition of "Standard Methods for the Analysis of Dairy Products" recommended by the American public health association: *Provided*, That nothing contained in this section shall be construed as prohibiting any other methods, procedures, equipment, or standards which have been demonstrated to be accurate and efficient and have been approved by the director.

The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules. [1963 c 58 § 12; 1961 c 11 § 15.32.630. Prior: 1927 c 192 § 4; 1919 c 192 § 17; RRS § 6180.]

15.32.660 Inspection, testing, by director, supervisor, inspectors. All duties and powers of inspection and testing conferred or directed by this chapter may be exercised by the director, supervisor, or an inspector of the department. [1961 c 11 § 15.32.660. Prior: 1927 c 192 § 15, part; 1919 c 192 § 39, part; RRS § 6201, part.]

15.32.670 Right of entry—Samples—Duplicate to owner. The director and his deputies may enter any place or building where he has reason to believe that a dairy product or imitation thereof is kept, made, sold, or offered for sale, and open any receptacle containing or supposed to contain any such article, and examine the contents thereof and he may take the article or a sample thereof for analysis. If the person from whom the sample is taken requests him to do so, he shall at the same time and in his presence seal up two samples of the article taken, one of which shall be for examination or analysis, and the other shall be delivered to the person from whom the article is taken. [1961 c 11 § 15.32.670. Prior: 1899 c 43 § 12; 1895 c 45 § 13; RRS § 6257.]

15.32.680 Possession of prohibited article as evidence. Possession of an article the sale of which is prohibited by this chapter shall be prima facie evidence that it is kept in violation of the provisions hereof, and the director may seize and take possession of it, and upon an order of court, he shall sell it for any purpose other than human food. [1961 c 11 § 15.32.680. Prior: 1899 c 43 § 28; RRS § 6250.]

15.32.690 Annual statistical report. On or before January 1st of each year, or oftener, the director shall mail to every owner or operator of a creamery, milk plant, milk condensing factory, factory of milk products, or cheese factory, and to every milk vendor and milk dealer, blanks for reporting milk and milk products production statistics. Within thirty days thereafter said reports properly filled out and signed by such persons, showing the amount of milk and milk products received, produced or distributed during the period fixed by the director, shall be returned to him. [1961 c 11 § 15.32.690. Prior: 1955 c 238 § 78; prior: (i) 1943 c 90 § 1, part; 1933 c 188 § 1, part; 1929 c 213 § 1, part; 1927 c 192 § 1, part; 1919 c 192 § 1, part; Rem. Supp. 1943 § 6164, part. (ii) 1929 c 213 § 6, part; 1927 c 192 § 16, part; 1921 c 104 § 3, part; 1919 c 192 § 41, part; RRS § 6203, part.]

15.32.692 Monthly reports of milk processors—Contents. All milk processors, as the term "processor" is defined in RCW 15.44.010, not within a federal order area, shall file with the department of agriculture of the state of Washington, on or before the fifteenth day of each month, a report, on forms supplied by the department of agriculture, showing the amount of milk purchased during the preceding month, and the percentage of such milk purchased or produced by the processor, if such is the case, that was used in each of the dairy products produced during the preceding month. If any milk was disposed of other than by producing it into dairy products during the preceding month, the report shall show the disposition of such milk. The report required by this section shall be verified under oath, certifying to the correctness and the completeness of the report. [1961 c 11 § 15.32.692. Prior: 1955 c 343 § 1. Formerly RCW 15.34.010.]

15.32.694 Monthly reports of milk processors—Information not to be divulged—Penalty. The report required by RCW 15.32.692 shall not be a public record, and it shall be a misdemeanor for any person to divulge any information given in such report which would reveal the business operation of the person making the report; except that nothing contained in this section shall be construed to prevent or make unlawful the use of information concerning the business operation of a person in any action, suit or proceeding instituted under the authority of RCW 15.32.692 through 15.32.698. [1961 c 11 § 15.32.694. Prior: 1955 c 343 § 2. Formerly RCW 15.34.020.]

15.32.698 Penalties. The first violation of the provisions of RCW 15.32.692 or 15.32.694 shall be a misdemeanor. A second violation and succeeding violations shall be a gross misdemeanor. [1961 c 11 § 15.32.698. Prior: 1955 c 343 § 4. Formerly RCW 15.34.040.]

15.32.700 Mutilation of brands, etc., prohibited. No person shall mutilate or remove any mark, brand, label, or other designation required by this chapter from any product, with intent to deceive or in violation of any

provision hereof. [1961 c 11 § 15.32.700. Prior: 1919 c 192 § 72; RRS § 6234.]

15.32.710 License fee, sale proceeds—Monthly remittance. All moneys received for licenses or from the sale of articles confiscated under this chapter shall be paid on the first of each month to the state treasurer to be placed in the general fund. [1961 c 11 § 15.32.710. Prior: 1899 c 43 § 27; RRS § 6249.]

15.32.720 Fines—Distribution—Remittance of district court fees, fines, penalties and forfeitures. One-half of all fines collected from prosecutions under this chapter shall be paid to the state and the remainder to the county in which the conviction is had: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 173; 1969 ex.s. c 199 § 12; 1961 c 11 § 15.32.720. Prior: 1919 c 192 § 82; RRS § 6244.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.32.730 Unlawful interference with official. It shall be unlawful to interfere with or obstruct any person in the performance of his official duties under this chapter. [1961 c 11 § 15.32.730. Prior: 1919 c 192 § 76; RRS § 6238.]

15.32.740 Unlawful conduct, what is—Penalty. The doing of any act prohibited or the failure to do any act required by this chapter or any rule or regulation issued hereunder, when not otherwise provided, shall constitute a misdemeanor. [1961 c 11 § 15.32.740. Prior: (i) 1919 c 192 § 43; RRS § 6205. (ii) 1919 c 192 § 77; RRS § 6239. (iii) 1915 c 101 § 7; RRS § 6265.]

15.32.750 Duty of prosecuting attorney. At the request of the director or his representative, the prosecuting attorney shall prosecute all criminal actions under this chapter within his county. [1961 c 11 § 15.32.750. Prior: 1919 c 192 § 78; RRS § 6240.]

15.32.755 Injunctions authorized—Venue. The director may bring an action to enjoin the violation of any provision of this chapter or rules adopted hereunder in the superior court of the county in which the defendant resides or maintains his principal place of business, notwithstanding the existence of any other remedy at law. [1963 c 58 § 14.]

15.32.760 Carrier employees to aid director—Violation, penalty. Every employee of a common carrier shall render to the director and his authorized representatives all possible assistance in locating any article named in this chapter which has come into its possession. Failure to do so shall be punishable by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment for not less than one month nor

more than six months, or by both fine and imprisonment. [1961 c 11 § 15.32.760. Prior: 1899 c 43 § 22; RRS § 6258.]

15.32.770 Court jurisdiction. Any superior, municipal, or district court shall have jurisdiction of all prosecutions and all proceedings for forfeiture and sale under this chapter. [1987 c 202 § 174; 1961 c 11 § 15.32.770. Prior: 1919 c 192 § 79; RRS § 6241.]

Intent—1987 c 202: See note following RCW 2.04.190.

15.32.780 Unlawful price fixing—Exception. No two or more persons shall by agreement or understanding, tacit or otherwise, fix or attempt to fix the price at which butter, cheese, milk, or other products mentioned in this chapter shall be bought or sold; except that the provisions of this section shall not apply to ordinary sales between buyer and seller. [1961 c 11 § 15.32.780. Prior: 1919 c 192 § 80; RRS § 6242.]

15.32.790 Deceit relative to milk and cream measures, grades, etc. No person shall, with intent to deceive or defraud, manipulate, or alter the measure, grade, test, or weight of any milk or cream; or make any false or inaccurate statement relative to measure, grade, test, or weight thereof; or use any measure or grading or testing apparatus which does not comply with the standards prescribed in this chapter or which has been condemned by the director. [1961 c 11 § 15.32.790. Prior: 1927 c 192 § 6; 1919 c 192 § 22; RRS § 6185.]

15.32.900 Declaration of police power. It is hereby declared that this chapter is enacted as an exercise of the police power of the state of Washington for the preservation of the public health and each and every section thereof shall be construed as having been intended to effect such purpose and not as having been intended to affect any regulation or restraint of commerce between the several states which may by the Constitution of the United States of America have been reserved to the congress thereof. [1961 c 11 § 15.32.900. Prior: 1919 c 192 § 83; RRS § 6245.]

15.32.910 Chapter cumulative. Nothing in this chapter shall be construed as affecting or being intended to effect a repeal of chapter 69.04 RCW or RCW 69.40-.010 through 69.40.025, or of any of such sections, or of any part or provision of any such sections, and if any section or part of a section in this chapter shall be found to contain, cover or effect any matter, topic or thing which is also contained in, covered in or effected by said sections, or by any of them, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers and duties herein prescribed shall be construed to be additional to those prescribed in such sections and not in substitution therefor. And nothing in this chapter shall be construed to forbid the importation, transportation, manufacture, sale, or possession of any article of food which is not prohibited from interstate commerce by the laws of the United States or rules or regulations lawfully made thereunder,

if there be a standard of quality, purity and strength therefor authorized by any law of this state, and such article comply therewith and be not misbranded. [1961 c 11 § 15.32.910. Prior: 1919 c 192 § 88; RRS § 6266.]

Chapter 15.35

WASHINGTON STATE MILK POOLING ACT

Sections

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15.35.010 Short title. This chapter may be known and cited as the Washington state milk pooling act to provide for equitable pooling among producers. [1971 ex.s. c 230 § 1.]

15.35.020 Declaration of public interest. The production and distribution of milk is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted for the purpose of protecting the health and welfare of the people of this state. [1971 ex.s. c 230 § 2.]

15.35.030 Declaration of public interest—Additional declaration. It is hereby declared that milk is a

necessary article of food for human consumption; that the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare. [1971 ex.s. c 230 § 3.]

15.35.040 Authority to establish marketing areas with pooling arrangements. It is recognized by the legislature that conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pooling arrangements between producers are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigations and public hearings, to prescribe such marketing areas and modify the same when advisable or necessary. [1971 ex.s. c 230 § 4.]

15.35.050 Statements as legislative determination. The statement of facts, policy, and application of this chapter as set forth in RCW 15.35.010 through 15.35.040 is hereby declared a matter of legislative determination. [1971 ex.s. c 230 § 5.]

15.35.060 Purposes. The purposes of this chapter are to:

(1) Authorize and enable the director to prescribe marketing areas and to establish pooling arrangements which are necessary due to varying factors of costs of production, health regulations, transportation, and other factors in said marketing areas of this state;

(2) Authorize and enable the director to formulate marketing plans subject to the provisions of this chapter with respect to the contents of such pooling arrangements and declare such plans in effect for any marketing area;

(3) Provide funds for administration and enforcement of this chapter by assessments to be paid by producers. [1971 ex.s. c 230 § 6.]

15.35.070 Powers conferred to be liberally construed—Monopoly prohibited. It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk. [1971 ex.s. c 230 § 7.]

15.35.080 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department or his duly appointed representative;

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;

(4) "Market" or "marketing area" means any geographical area within the state comprising one or more

counties or parts thereof, or one or more cities or towns or parts thereof where marketing conditions are substantially similar and which may be designated by the director as one marketing area;

(5) "Milk" means all fluid milk as defined in chapters 15.32 and 15.36 RCW as enacted or hereafter amended and rules adopted thereunder;

(6) "Milk products" includes any product manufactured from milk or any derivative or product of milk;

(7) "Milk dealer" means any person engaged in the handling of milk in his capacity as the operator of a milk plant, a country plant or any other plant from which milk or milk products are disposed of to any place or establishment within a marketing area other than to a plant in such marketing area;

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW as enacted or hereafter amended;

(9) "Classification" means the classification of milk into classes according to its utilization by the department;

(10) "Producer-dealer" means a producer who engages in the production as well as the distribution of milk products. [1971 ex.s. c 230 § 8.]

15.35.090 Uniformity of milk control between states as goal. The director shall in carrying out the provisions of this chapter and any marketing plan thereunder confer with the legally constituted authorities of other states of the United States, and the United States department of agriculture, for the purpose of seeking uniformity of milk control with respect to milk coming in to the state and going out of the state in interstate commerce with a view to accomplishing the purposes of this chapter, and may enter into a compact or compacts which will insure a uniform system of milk control between this state and other states. [1971 ex.s. c 230 § 9.]

15.35.100 Director's authority—Subpoena power—Rules and regulations. Subject to the provisions of this chapter and the specific provisions of any marketing plan established thereunder, the director is hereby vested with the authority:

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and including but not limited to the authority to:

(a) prescribe the method and time of payment to be made to producers by dealers in accordance with a marketing plan for milk;

(b) determine what constitutes a natural milk market area;

(c) determine by using uniform rules, what portion of the milk produced by each producer subject to the provisions of a marketing plan shall be marketable in fluid form and what proportion so produced shall be considered as surplus; such determination shall also apply to milk dealers who purchase or receive milk, for sale or distribution in such marketing area, from plants whose producers are not subject to such pooling arrangements;

(d) provide for the pooling and averaging of all returns from the sales of milk in a designated market area, and the payment to all producers of a uniform pool price for all milk so sold;

(e) provide and establish distributor pools or market pools for a designated market area with such rules and regulations as the director may adopt;

(f) employ an executive officer, who shall be known as the milk pooling administrator;

(g) employ such persons as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

(h) determine by rule, what portion of any increase in the demand for fluid milk subject to a pooling arrangement and marketing plan providing for quotas shall be assigned new producers or existing producers.

(2) To issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records anywhere in the state in any hearing affecting the authority of privileges granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW as enacted or hereafter amended;

(3) To make, adopt, and enforce all rules necessary to carry out the purpose of this chapter subject to the provisions of chapter 34.04 RCW concerning the adoption of rules, as enacted or hereafter amended: *Provided*, That nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public health laws enacted by the state or any municipal corporation or the public service laws of this state. [1971 ex.s. c 230 § 10.]

15.35.110 Referendum on establishing or discontinuing market area pooling arrangement. (1) The director, either upon his own motion or upon petition by ten percent of the producers in any proposed area, shall conduct a hearing to determine whether to establish or discontinue a market area pooling arrangement. Upon determination by the director that in order to satisfy the purposes of this chapter a pooling arrangement should either be established or terminated, a referendum of affected individual producers shall be conducted by the department.

(a) Sixty-six and two-thirds percent of the producers that vote must be in favor of establishing a market area and pooling plan before it can be put into effect by the director. The director, within one hundred twenty days from the date the results of the referendum are filed with the secretary of state, shall establish a market pool in the market area, as provided for in this chapter.

(b) If fifty-one percent of those voting representing fifty-one percent of the milk produced in the market area vote to terminate a pooling plan, the director, within one hundred twenty days, shall terminate all the provisions of said market area and pooling arrangement. [1971 ex.s. c 230 § 11.]

15.35.120 Qualifications for producers to sign petitions or vote in referendums. (1) The producers qualified

to sign a petition, or to vote in any referendum concerning a market pool, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The director is authorized during business hours to review the books and records of handlers to obtain a list of the producers qualified to sign petitions or to vote in referendums. [1971 ex.s. c 230 § 12.]

15.35.130 Form of producer petitions. Petitions filed with the director by producers shall:

(1) Consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on each sheet prior to, or at the time the first signature is obtained on each sheet. The director shall not accept a sheet on which such date is more than sixty days, prior to the time it is filed with the director. After a petition is filed, additional pages may be filed if time limits have not expired.

(2) Contain wording at the top of each page which clearly explains to each person whose signature appears thereon the meaning and intent of the petition. Such wording shall also clearly indicate to the director if it is in reference to a request for public hearing, exactly what matters are to be studied and desired. Similar information must be directed to the director if the matter relates to a referendum. The director has the authority to clarify wording from a petition before making it a part of a referendum.

No informalities or technicalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate any referendum if it is fairly and reasonably conducted by the director. [1971 ex.s. c 230 § 13.]

15.35.140 Director to establish systems within market areas. (1) The director shall establish a system of pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director shall establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk dealers or delivering milk in such market area, will receive the same price for all quota milk and all surplus over quota milk, except that any premium paid to a producer by a dealer above established prices shall not be considered in determining average pool prices. [1971 ex.s. c 230 § 14.]

15.35.150 Determination of producer's quota. (1) Under a market pool and as used in this section, "quota" means a producer's portion of the total sales of class I milk in a market area plus a reserve determined by the director.

(2) The director shall in each market area subject to a market plan establish each producer's initial quota in the market area. Such initial quota shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.04 RCW. In making

this determination, consideration shall be given to a history of the producer's production record.

In any system of establishing quotas, provision shall be made for new producers to qualify for allocation of quota in a reasonable proportion and for old and new producers to participate in any new class I sales in a reasonable proportion.

All subsequent changes or new quota issued shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.04 RCW. [1971 ex.s. c 230 § 15.]

15.35.160 Contracts, rights and powers of associations not affected. No provision of this chapter shall be deemed or construed to:

(1) Affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation;

(2) Impair or affect any contract which any such cooperative association has with milk dealers or others which are not in violation of this chapter;

(3) Affect or abridge the rights and powers of any such cooperative association conferred by the laws of this state under which it is incorporated. [1971 ex.s. c 230 § 16.]

15.35.170 Quotas—Transfer of—Limitations.

Quotas provided for in this chapter may not in any way be transferred without the consent of the director. Regulations regarding transfer of quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.04 RCW. Any contract for the transfer of quotas, unless the transfer has previously been approved by the director, shall be null and void. The director shall make rules and regulations to preclude any person from using a corporation as a device to evade the provisions of this section. The quotas assigned to any corporation shall become null and void as of any time the corporation does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property not to be taken or abolished by the state without compensation. [1971 ex.s. c 230 § 17.]

15.35.180 Records of milk dealers and cooperatives, inspection and audit of. The director shall examine and audit not less than one time each year or at any other such time he considers necessary, the books and records, and may photostat such books, records, and accounts of milk dealers and cooperatives licensed or believed subject to license under this chapter for the purpose of determining:

(1) How payments to producers for the milk handled are computed and whether the amount of such payments are in accordance with the applicable marketing plan;

(2) If any provisions of this chapter affecting such payments directly or indirectly have been or are being violated.

No person shall in any way hinder or delay the director in conducting such examination. [1971 ex.s. c 230 § 18.]

15.35.190 Records necessary for milk dealers. All milk dealers subject to the provisions of this chapter shall keep the records as deemed necessary by the director. [1971 ex.s. c 230 § 19.]

15.35.200 Verified reports of milk dealers. Each milk dealer subject to the provisions of this chapter shall from time to time, as required by rule of the director, make and file a verified report, on forms prescribed by the director, of all matters on account for which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of the purpose of this chapter. Such reports shall cover a period specified in the order, and shall be filed within a time fixed by the director. [1971 ex.s. c 230 § 20.]

15.35.210 Milk dealer license—Required. It shall be unlawful for any milk dealer subject to the provisions of a marketing plan to handle milk subject to the provisions of such marketing plan without first obtaining an annual license from the director for each separate place of business where such milk is received or sold. Such license shall be in addition to any other license required by the laws of this state: *Provided*, That the provisions of this section shall not become effective for a period of sixty days subsequent to the inception of a marketing plan in any marketing area prescribed by the director. [1971 ex.s. c 230 § 21.]

15.35.220 Milk dealer license—Application for—Contents. Application for a license to act as a milk dealer shall be on a form prescribed by the director and shall contain, but not be limited to, the following:

- (1) The nature of the business to be conducted;
- (2) The full name and address of the person applying for the license if an individual; and if a partnership, the full name and address of each member thereof; and if a corporation, the full name and address of each officer and director;
- (3) The complete address at which the business is to be conducted;
- (4) Facts showing that the applicant has adequate personnel and facilities to properly conduct the business of a milk dealer;
- (5) Facts showing that the applicant has complied with all the rules prescribed by the director under the provisions of this chapter;
- (6) Any other reasonable information the director may require. [1971 ex.s. c 230 § 22.]

15.35.230 Milk dealer license—Fees—Additional assessment for late renewal. (1) Application for each milk dealer's license shall be accompanied by an annual license fee of five dollars.

(2) If an application for the renewal of a milk dealer's license is not filed on or before the first day of an annual licensing period a fee of three dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional assessment shall not apply if

the applicant furnishes an affidavit that he has not acted as a milk dealer subsequent to the expiration of his prior license. [1971 ex.s. c 230 § 23.]

15.35.240 Milk dealer license—Denial, suspension or revocation of—Grounds. The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter 34.04 RCW, concerning contested cases, as enacted or hereafter amended, or rules adopted thereunder by the director, when he is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or where a money judgment has been secured against him upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 24.32 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued. [1987 c 164 § 1; 1971 ex.s. c 230 § 24.]

15.35.250 Assessments on producers—Amount—Collection—Penalty for noncollection—Court action. There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or his agent subject to such marketing plan and shall be paid to the director.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this section and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW 15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court. [1971 ex.s. c 230 § 25.]

15.35.260 Records and reports of licensees for assessment purposes. Each licensee, in addition to other records required under the provisions of this chapter, shall keep such records and make such reports as the director may require for the purpose of computing payments of assessments by such licensee. [1971 ex.s. c 230 § 26.]

15.35.270 Assessment due date. All assessments on milk subject to the provisions of this chapter and a marketing order shall be paid to the director on or before the twentieth day of the succeeding month for the milk which was received or handled in the previous month. [1971 ex.s. c 230 § 27.]

15.35.280 Separate account for each marketing plan—Deductions for departmental costs. The director shall establish a separate account for each marketing plan established under the provisions of this chapter, and all license fees and assessments collected under any such marketing plan shall be deposited in its separate account to be used only for the purpose of carrying out the provisions of such marketing plan: *Provided*, That the director may deduct from each such account the necessary

costs incurred by the department. Such costs shall be prorated among the several marketing plans if more than one is in existence under the provisions of this chapter. [1971 ex.s. c 230 § 28.]

15.35.290 Court actions to implement. In addition to any other remedy provided by law, the director in the name of the state shall have the right to sue in any court of competent jurisdiction for the recovery of any moneys due it from any persons subject to the provisions of this chapter and shall also have the right to institute suits in equity for injunctive relief and for purpose of enforcement of the provisions of this chapter. [1971 ex.s. c 230 § 29.]

15.35.300 General penalty—Misdemeanor—Exception. Any violation of this chapter and/or rules and regulations adopted thereunder shall constitute a misdemeanor: *Provided*, That this section shall not apply to retail purchasers who purchase milk for domestic consumption. [1971 ex.s. c 230 § 30.]

15.35.310 Certain producers exempt. The provisions of this chapter shall not apply to a producer who acts as a milk dealer only for milk he produces on his own dairy farm from cows which he owns or is purchasing: *Provided*, That such producer shall lease or own his processing facilities, or that he shall not have more than seventy-five percent of the milk he produces processed, bottled, or packaged by another milk dealer or producer who acts as a dealer: *Provided further*, That such milk producer shall remain exempt from the provisions of this chapter if he purchases not more than ten percent of the milk he handled from another producer or milk dealer and if he sells any excess production from his farm or farms to the pool at the lowest use classification price. [1971 ex.s. c 230 § 31.]

15.35.900 Severability—1971 ex.s. c 230. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances, is not affected. [1971 ex.s. c 230 § 32.]

Chapter 15.36 FLUID MILK

Sections

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Fluid milk, etc., containers, units: Chapter 19.94 RCW.

15.36.011 Definitions and standards, establishment and amendment by rule—Milk and milk products—Products made to resemble or imitate dairy products—Labels. The director of agriculture, by rule, may establish and/or amend definitions and standards for milk and milk products. Such definitions and standards established by the director shall conform, insofar as practicable, with the definitions and standards for milk and milk products promulgated by the secretary of the United States department of health, education and welfare. The director of agriculture, by rule, may likewise establish and/or amend definitions and standards for products whether fluid, powdered or frozen, compounded or manufactured to resemble or in semblance or imitation of genuine dairy products as defined under the provisions of RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600 or chapter 15.32 RCW as enacted or hereafter amended. Such products made to resemble or in semblance or imitation of genuine dairy products shall conform with all the provisions of chapter 15.38 RCW and be made wholly of nondairy products.

All such products compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product shall set forth on the container or labels the specific generic name of each ingredient used.

In the event any product compounded or manufactured to resemble or in semblance or imitation of a genuine dairy product contains vegetable fat or oil, the generic name of such fat or oil shall be set forth on the label. If a blend or variety of oils is used, the ingredient statement shall contain the term "vegetable oil" in the appropriate place in the ingredient statement, with the qualifying phrase following the ingredient statement, such as "vegetable oils are soybean, cottonseed and coconut oils" or "vegetable oil, may be cottonseed, coconut or soybean oil."

The labels or containers of such products compounded or manufactured to resemble or in semblance or imitation of genuine dairy products shall not use dairy terms or words or designs commonly associated with dairying or genuine dairy products, except as to the extent that such words or terms are necessary to meet legal requirements for labeling: *Provided*, That the term "nondairy" may be used as an informative statement.

The director may adopt any other rules necessary to carry out the purposes of chapters 15.36 and 15.38 RCW: *Provided*, That these rules shall not restrict the display or promotion of products covered under this section. The adoption of all rules provided for in this section shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules. [1969 ex.s. c 102 § 1.]

Repealed definitions constitute rules: "The definitions constituting section 15.36.010, chapter 11, Laws of 1961 and RCW 15.36.010 as hereinafter in section 7 of this 1969 amendatory act repealed are hereby constituted and declared to be operative and to remain in force as the rules of the department of agriculture until such time as amended, modified, or revoked by the director of agriculture." [1969 ex.s. c 102 § 2.]

15.36.020 Definitions—"Pasteurization". "Pasteurization," "pasteurize" and similar terms, refer to the process of heating every particle of milk or milk products to at least one hundred forty-three degrees Fahrenheit, and holding at such temperature for at least thirty minutes, or to at least one hundred sixty-one degrees Fahrenheit, and holding at such temperature for at least fifteen seconds in approved and properly operated equipment under the provisions of this chapter: *Provided*, That nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated to be equally efficient and which is approved by the director. [1961 c 11 § 15.36.020. Prior: 1955 c 238 § 3; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

15.36.030 Definitions—"Adulterated and misbranded milk and milk products". "Adulterated and misbranded milk and milk products." Any milk to which water has been added, or any milk or milk product which contains any unwholesome substance, or which if defined in this chapter does not conform with its definition, shall be deemed adulterated. Any milk or milk products which carries a grade label unless such grade label has been awarded by the director and not revoked, or which fails to conform in any other respect with the statements on the label, shall be deemed to be misbranded. [1961 c 11 § 15.36.030. Prior: 1955 c 238 § 4; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

Civil penalty for violations of standards for component parts of fluid dairy products established by RCW 15.36.030: RCW 15.36.595.

15.36.040 Definitions—"Milk producer"—"Milk distributor"—"Dairy"—"Milk hauler"—"Milk plant". A "milk producer" is any person or organization who owns or controls one or more cows a part

or all of the milk or milk products from which is sold or offered for sale.

A "milk distributor" is any person who offers for sale or sells to another any milk or milk products for human consumption as such and shall include a milk producer selling or offering for sale milk or milk products at the dairy farm.

A "dairy" or "dairy farm" is any place or premises where one or more cows are kept, a part or all of the milk or milk products from which is sold or offered for sale.

A "milk hauler" is any person, other than a milk producer or a milk plant employee, who transports milk or milk products to or from a milk plant or a collecting point.

A "milk plant" is any place, premises or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, or prepared for distribution, except an establishment where milk or milk products are sold at retail only. [1961 c 11 § 15.36.040. Prior: 1955 c 238 § 5; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

15.36.055 Definitions—"Official brucellosis adult vaccinated cattle". "Official brucellosis adult vaccinated cattle" means those cattle, officially vaccinated over the age of official calfhood vaccinated cattle, which the director has determined have been commingled with, or kept in close proximity to, cattle identified as brucellosis reactors, and have been vaccinated against brucellosis in a manner and under the conditions prescribed by the director after a hearing and under rules adopted under chapter 34.04 RCW, the administrative procedure act. [1982 c 131 § 1.]

15.36.060 Definitions—"Person," "director," "department," "health officer," "and/or." The word "person" means any individual, partnership, firm, corporation, company, trustee, or association.

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

"Department" means the state department of agriculture.

"Health officer" means the county or city health officer as defined in Title 70 RCW, or his authorized representatives.

Where the term "and/or" is used "and" shall apply where possible, otherwise "or" shall apply. [1984 c 226 § 2; 1961 c 11 § 15.36.060. Prior: 1955 c 238 § 7; prior: 1949 c 168 § 1, part; Rem. Supp. 1949 § 6266-30, part.]

15.36.070 Sale of adulterated, misbranded, or ungraded milk or milk products prohibited. No person shall produce, sell, offer, or expose for sale, or have in possession with intent to sell, in the fluid state for direct consumption as such, any milk or milk product which is adulterated, misbranded, or ungraded. It shall be unlawful for any person, elsewhere than in a private home, to

have in possession any adulterated, misbranded, or ungraded milk or milk products: *Provided*, That in an emergency the sale of ungraded milk or milk products may be authorized by the director, in which case they shall be labeled "ungraded."

Adulterated, misbranded, and/or ungraded milk or milk products may be impounded and disposed of by the director. [1961 c 11 § 15.36.070. Prior: 1949 c 168 § 2; Rem. Supp. 1949 § 6266-31.]

15.36.075 Milk not deemed adulterated if added ingredient is approved by rule or regulation. For the purpose of this chapter, no fluid milk or fluid milk product shall be deemed to be adulterated if such fluid milk or fluid milk product contains an added ingredient or substance in the amount and kind prescribed or allowed by a rule or regulation promulgated by the director subsequent to a public hearing pursuant to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended. [1969 ex.s. c 102 § 3.]

15.36.080 Permits. It shall be unlawful for any person to transport, or to sell, or offer for sale, or to have in storage where milk or milk products are sold or served, any milk or milk product defined in this chapter, who does not possess an appropriate permit from the director or an authorized inspection service as defined in this chapter.

Every milk producer, milk distributor, milk hauler, and operator of a milk plant shall secure a permit to conduct such operation as defined in this chapter. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.

Such a permit may be temporarily suspended by the director or health officer of a milk inspection unit upon violation by the holder of any of the terms of this chapter, or for interference with the director or health officer of a milk inspection unit in the performance of his duties, or revoked after an opportunity for a hearing by the director upon serious or repeated violations. [1961 c 11 § 15.36.080. Prior: 1955 c 238 § 8; 1949 c 168 § 3; Rem. Supp. 1949 § 6266-32.]

15.36.090 Labeling. All bottles, cans, packages, and other containers, enclosing milk or any milk product defined in this chapter shall be plainly labeled or marked with (1) the name of the contents as given in the definitions of this chapter; (2) the grade of the contents; (3) the word "pasteurized" only if the contents have been pasteurized; (4) the word "raw" only if the contents are raw; (5) the name of the producer if the contents are raw, and the identity of the plant at which the contents were pasteurized if the contents are pasteurized; (6) the phrase "for pasteurization" if the contents are to be pasteurized; (7) in the case of vitamin D milk the designation "vitamin D milk," the source of the vitamin D and the number of units per quart; (8) the word "reconstituted" or "recombined" if included in the name of the product as defined in this chapter; (9) in the case of

concentrated milk or milk products the volume or proportion of water to be added for recombining; (10) the words "skim milk solids added," and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk or milk products: *Provided*, That only the identity of the producer shall be required on cans delivered to a milk plant which receives only raw milk for pasteurization and which immediately dumps, washes, and returns the cans to the producer.

The label or mark shall be in letters of a size, kind, and color approved by the director and shall contain no marks or words which are misleading. [1961 c 11 § 15.36.090. Prior: 1955 c 238 § 9; 1949 c 168 § 4; Rem. Supp. 1949 § 6266-33.]

15.36.100 Inspection of dairy farms and milk plants. Prior to the issuance of a permit and at least once every six months the director shall inspect all dairy farms and all milk plants: *Provided*, That the director may accept the results of periodic industry inspections of producer dairies if such inspections have been officially checked periodically and found satisfactory. In case the director discovers the violation of any item of sanitation, he shall make a second inspection after a lapse of such time as he deems necessary for the defect to be remedied, but not before the lapse of three days, and the second inspection shall be used in determining compliance with the grade requirements of this chapter. Any violation of the same requirement of this chapter on such reinspection shall call for immediate degrading or suspension of permit.

One copy of the inspection report shall be posted by the director in a conspicuous place upon an inside wall of one of the dairy farm or milk plant buildings, and said inspection report shall not be defaced or removed by any person except the director. Another copy of the inspection report shall be filed with the records of the director.

Every milk producer and distributor shall upon the request of the director permit him access to all parts of the establishment, and every distributor shall furnish the director, upon his request, for official use only, samples of any milk product for laboratory analysis, a true statement of the actual quantities of milk and milk products of each grade purchased and sold, together with a list of all sources, records of inspections and tests, and recording thermometer charts. [1961 c 11 § 15.36.100. Prior: 1949 c 168 § 5; Rem. Supp. 1949 § 6266-34.]

15.36.110 Examination of milk and milk products. During each six months period at least four samples of milk and cream from each dairy farm and each milk plant shall be taken on separate days and examined by the director: *Provided*, That in the case of raw milk for pasteurization the director may accept the results of nonofficial laboratories which have been officially checked periodically and found satisfactory. Samples of other milk products may be taken and examined by the director as often as he deems necessary. Samples of milk and milk products from stores, cafes, soda fountains,

restaurants, and other places where milk or milk products are sold shall be examined as often as the director may require. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphatase tests and other laboratory tests shall conform to the procedures in the current edition of "Standard Methods For The Examination Of Dairy Products," recommended by the American public health association. Examinations may include such other chemical and physical determinations as the director may deem necessary for the detection of adulteration. Samples may be taken by the director at any time prior to the final delivery of the milk or milk products. All proprietors of cafes, stores, restaurants, soda fountains, and other similar places shall furnish the director, upon his request, with the name of all distributors from whom their milk and milk products are obtained. Bio-assays of the vitamin D content of vitamin D milk shall be made when required by the director in a laboratory approved by him for such examinations.

If two of the last four consecutive bacterial counts, somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the standard for milk or milk products, the director shall send written notice thereof to the person concerned. This notice shall remain in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one days of the sending of the notice, but not before the lapse of three days, except sixty days must lapse before an official somatic cell count can be taken. The director shall degrade or suspend the grade A permit whenever the standard is again violated by more than one of the last four consecutive samples.

In case of violation of the phosphatase test requirements, the cause of underpasteurization shall be determined and removed before milk or milk products from this plant can again be sold as pasteurized milk or milk products. [1981 c 297 § 1; 1961 c 11 § 15.36.110. Prior: 1955 c 238 § 10; 1949 c 168 § 6; Rem. Supp. 1949 § 6266-35.]

Severability—1981 c 297: "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." [1981 c 297 § 43.]

15.36.115 Test for antibiotic or pesticide residue—Penalty—Appeal—Disposition of penalty—Investigation of cause of residue—Prohibition on sale.

(1) If the results of an antibiotic or pesticide residue test are above the actionable level as determined by procedures set forth in the current edition of "Standard Methods for the Examination of Dairy Products," a producer holding a grade A permit is subject to a civil penalty. The penalty shall be in an amount equal to one-half the value of the sum of the volumes of milk equivalent produced under the permit on the day prior to and the day of the adulteration. The value of the milk shall be computed by the weighted average price for the federal market order under which the milk is delivered.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or

transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a contested case hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.04 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter 34.04 RCW. Tests performed for antibiotic or pesticide residues by a state or certified industry laboratory of a milk sample drawn by a department official or a licensed dairy technician shall be admitted as prima facie evidence of the presence or absence of an antibiotic or pesticide residue.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department. The penalty shall be deducted by the violator's marketing organization from the violator's final payment for the month following the issuance of the final order. The department shall promptly notify the violator's marketing organization of any penalties contained in the final order.

(4) All penalties received or recovered from violations of this section shall be remitted monthly by the violator's marketing organization to the Washington state dairy products commission and deposited in a revolving fund to be used solely for the purposes of education and research. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the antibiotic or pesticide residue test requirements, an investigation shall be made to determine the cause of the residue which shall be corrected. Additional samples shall be taken as soon as possible and tested as soon as feasible for antibiotic or pesticide residue by the department or a certified laboratory. After the notice has been received by the producer and the results of a test of such an additional sample indicate that residues are above the actionable level or levels referred to in subsection (1) of this section, the producer's milk may not be sold until a sample is shown to be below the actionable levels established for the residues. [1984 c 226 § 1.]

15.36.120 Grading of milk and milk products—In general. Grades of milk and milk products as defined in this chapter shall be based on the respectively applicable standards contained in RCW 15.36.120 through 15.36.460, with the grading of milk products being identical with the grading of milk, except that bacterial standards are omitted in the case of cultured milk products. Vitamin D milk shall be only of grade A, certified pasteurized, or certified raw quality. The grade of a milk product shall be that of the lowest grade milk or milk

product used in its preparation. [1984 c 226 § 3; 1981 c 297 § 2; 1961 c 11 § 15.36.120. Prior: 1955 c 238 § 12; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.36.130 Certified milk—raw—Standards. Certified milk—raw is raw milk which conforms with requirements of the American association of medical milk commissions in force at the time of production and is produced under the supervision of a medical milk commission reporting monthly to the director and the state department of social and health services. [1979 c 141 § 21; 1961 c 11 § 15.36.130. Prior: 1955 c 238 § 13; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.140 Grade A raw milk—Standards in general. Grade A raw milk is raw milk produced upon dairy farms conforming with all of the items of sanitation contained in RCW 15.36.150 through 15.36.280, and the bacterial plate count does not exceed twenty thousand per milliliter and the coliform count does not exceed ten per milliliter.

Grade A raw milk for pasteurization is raw milk produced upon dairy farms conforming with all of the same items of sanitation except RCW 15.36.265 (bottling and capping), 15.36.270 (personnel health), and portions of other items as indicated, and the bacterial plate count, as delivered from the farm, does not exceed eighty thousand per milliliter as determined in accordance with RCW 15.36.110. [1984 c 226 § 4; 1981 c 297 § 3; 1961 c 11 § 15.36.140. Prior: 1955 c 238 § 14; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.36.150 Cows—Tuberculosis, brucellosis, other diseases. Except as provided hereinafter, tuberculin test of all herds and additions thereto shall be made before any milk therefrom is sold, and at least once every twelve months thereafter, by an accredited and licensed veterinarian approved by the state department of agriculture or veterinarian employed by the bureau of animal industry, United States department of agriculture. Said tests shall be made and the reactors disposed of in accordance with the requirements approved by the director for accredited herds. A certificate signed by the veterinarian or attested to by the director and filed with the director shall be evidence of the above test: *Provided*, That in modified accredited counties in which the modified accredited area plan is applied to the dairy herds, the modified accredited area system approved by the director shall be accepted in lieu of annual testing.

No fluid milk or cream designated or represented to be "grade A" fluid milk or cream shall be sold, offered or exposed for sale which has been produced from a herd of cows, one or more of which are infected with brucellosis at the time such milk is produced, or from animals in such herd which have not been blood tested for brucellosis at least once during the preceding calendar year,

or milk ring tested for brucellosis at least semiannually during the preceding year. The results of a test for brucellosis by the state or federal laboratory of a blood sample drawn by an official veterinarian, shall be prima facie evidence of the infection or noninfection of the animal or herds: *Provided*, That in lieu thereof, two official negative milk ring tests for brucellosis not less than six months apart may be accepted as such evidence. All herds of cows, the fluid milk or cream from which is designated or represented to be "grade A" fluid milk or cream shall be blood tested for brucellosis annually or milk ring tested for brucellosis semiannually. Such herds showing any reaction to the milk ring test shall be blood tested and all reactors to the blood test removed from the herd and disposed of within fifteen days from the date they are tagged and branded. The remaining animals in the infected herd shall be retested at not less than thirty-day nor more than sixty-day intervals from the date of the first test: *Provided*, That herds that have been officially brucellosis adult vaccinated shall be retested not less than sixty days nor more than one hundred fifty days after being so vaccinated and such herds shall be retested and released from quarantine at intervals and under conditions prescribed by the director. A series of retests, with removal and disposition of reacting animals, shall be continued until the herd shall have passed two successive tests in which no reactors are found. If upon a final test, not less than six months nor more than seven months from the date of the last negative test, no reactors are found in the herd, it shall be deemed a disease free herd. Results of official blood or milk ring tests shall be conspicuously displayed in the milk house.

All milk and milk products consumed raw shall be free from herds or additions thereto which have been found free from brucellosis, as shown by blood serum tests or other approved tests for agglutinins against brucella organisms made in a laboratory approved by the director. All such herds shall be retested at least every twelve months and all reactors removed from the herd. If a herd is found to have one or more animals positive to the brucellosis test, all milk from that herd is to be pasteurized until the three consecutive brucellosis tests obtained at thirty-day intervals between each test are found to be negative. A certificate identifying each animal by number and signed by the laboratory making the test shall be evidence of the above test.

Cows which show an extensive or entire induration of one or more quarters of the udder upon physical examination, whether secreting abnormal milk or not, shall be permanently excluded from the milking herd. Cows giving bloody, or stringy, or otherwise abnormal milk, but with only slight induration of the udder shall be excluded from the herd until reexamination shows that the milk has become normal.

For other diseases such tests and examinations as the director may require after consultation with state livestock sanitary officials shall be made at intervals and by methods prescribed by him. [1982 c 131 § 2; 1961 c 11 § 15.36.150. Prior: 1955 c 238 § 15; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.155 Grade A raw milk—Dairy barn, lighting. A milking barn or stable shall be provided. It shall be provided with adequate light, properly distributed, for day or night milking. [1961 c 11 § 15.36.155. Prior: 1955 c 238 § 16; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.160 Grade A raw milk—Dairy barn, air space, ventilation. Such sections of all dairy barns where cows are kept or milked shall be well ventilated and shall be so arranged as to avoid overcrowding. [1961 c 11 § 15.36.160. Prior: 1955 c 238 § 17; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.165 Grade A raw milk—Milking stable, floors, animals. The floors and gutters of that portion of the barn or stable in which cows are milked shall be constructed of concrete or other approved impervious and easily cleaned material: *Provided*, That if the milk is to be pasteurized, tight, two-inch tongue and groove wood, impregnated with waterproofing material and laid with a mastic joint at the gutter may be used under the cows. Floors and gutters shall be graded to drain properly and shall be kept clean and in good repair. No horses, swine, or fowl shall be permitted in the milking stable. If dry cows, calves, or bulls are stabled therein, they shall be confined in stalls, stanchions or pens. [1961 c 11 § 15.36.165. Prior: 1955 c 238 § 18; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.170 Grade A raw milk—Milking stable, walls and ceiling. The interior walls and the ceilings of the milking barn or stable shall be smooth, shall be whitewashed or painted as often as may be necessary, or finished in an approved manner, and shall be kept clean and in good repair. In case there is a second story above the milking barn or stable the ceiling shall be tight. If hay, grain or other feed is stored in a feed room or feed storage space adjoining the milking space, it shall be separated therefrom by a dust tight partition and door. No feed shall be stored in the milking portion of the barn unless stored in dust tight containers. [1961 c 11 § 15.36.170. Prior: 1955 c 238 § 19; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.175 Grade A raw milk—Cow yard. The cow yard shall be graded and drained as well as practicable and so kept that there are no standing pools of water nor accumulation of organic wastes. Swine shall be kept out. [1961 c 11 § 15.36.175. Prior: 1955 c 238 § 20; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.180 Grade A raw milk—Manure disposal. All manure shall be removed and stored at least fifty feet from the milking barn or disposed of in such manner as best to prevent the breeding of flies therein and the access of cows to piles thereof: *Provided*, That in loafing or pen type stables manure droppings shall be removed or clean bedding added at sufficiently frequent intervals to prevent the accumulation of manure on

cows' udders and flanks and the breeding of flies. [1961 c 11 § 15.36.180. Prior: 1955 c 238 § 21; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.185 Grade A raw milk—Milk house or room, construction. There shall be provided a milk house or milk room in which the cooling, handling, and storing of milk and milk products and the washing, bactericidal treatment, and storing of milk containers and utensils shall be done. (1) The milk house or room shall be provided with a tight floor constructed of concrete or other impervious material, in good repair, and graded to provide proper drainage. (2) It shall have walls and ceilings of such construction as to permit easy cleaning, and shall be well painted or finished in an approved manner. (3) It shall be well lighted and ventilated. (4) It shall have all openings effectively screened, including outward-opening, self-closing doors, unless other effective means are provided to prevent the entrance of flies. (5) It shall be used for no other purposes than those specified above, except as may be approved by the director. (6) It shall not open directly into a stable or into any room for domestic purposes. (7) It shall have water piped into it. (8) It shall be provided with adequate facilities for the heating of water for the cleaning of utensils. (9) It shall be equipped with two-compartment stationary wash and rinse vats, except that in the case of retail raw milk, if chemicals are employed as the principal bactericidal treatment, the three-compartment type must be used; (10) and shall, unless the milk is to be pasteurized, be partitioned to separate the handling of milk and the storage of cleaned utensils from the cleaning and other operations, which shall be so located and conducted as to prevent any contamination of the milk or of cleaned equipment. [1961 c 11 § 15.36.185. Prior: 1955 c 238 § 22; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.190 Grade A raw milk—Milk house or room, cleanliness, flies. The floors, walls, ceilings, and equipment of the milk house or room shall be kept clean at all times. All means necessary for the elimination of flies shall be used. [1961 c 11 § 15.36.190. Prior: 1955 c 238 § 23; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.195 Grade A raw milk—Toilet. Every dairy farm shall be provided with one or more sanitary toilets conveniently located and properly constructed, operated and maintained so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply. [1961 c 11 § 15.36.195. Prior: 1955 c 238 § 24; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.200 Grade A raw milk—Water supply. The water supply for the milk room and dairy barn shall be properly located, constructed, and operated, and shall be easily accessible, adequate, and of a safe sanitary quality according to standards approved by the state board of health. [1961 c 11 § 15.36.200. Prior: 1955 c 238 § 25;

prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.205 Grade A raw milk—Utensils, holding tanks, construction. All multi-use containers, equipment, or other utensils used in the handling, storage, or transportation of milk or milk products shall be made of smooth nonabsorbent material and of such construction as to be easily cleaned and shall be in good repair. Joints and seams shall be welded or soldered flush. Woven wire cloth or multi-use cloth shall not be used for straining milk. If milk is strained, filter pads shall be used and not reused. All milk pails shall be of the seamless hooded type. All single-service containers, closures, and filter pads used shall have been manufactured, packaged, transported, and handled in a sanitary manner.

The design, construction, material and operation of all farm holding tanks shall be such as approved by the director. [1961 c 11 § 15.36.205. Prior: 1955 c 238 § 26; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.210 Grade A raw milk—Utensils, cleaning. All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk or milk products must be thoroughly cleaned after each usage. [1961 c 11 § 15.36.210. Prior: 1955 c 238 § 27; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.215 Grade A raw milk—Utensils, bactericidal treatment. All multi-use containers, equipment, and other utensils used in the handling, storage, or transportation of milk or milk products shall, before each usage, be effectively subjected to an approved bactericidal process with steam, hot water, chemicals, or hot air. [1961 c 11 § 15.36.215. Prior: 1955 c 238 § 28; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.220 Grade A raw milk—Utensils, storage. All containers and other utensils used in the handling, storage, or transportation of milk or milk products shall, unless stored in bactericidal solutions, be so stored as to drain and dry and so as not to become contaminated before being used. [1961 c 11 § 15.36.220. Prior: 1955 c 238 § 29; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.225 Grade A raw milk—Utensils, handling. After bactericidal treatment containers and other milk and milk product utensils shall be handled in such a manner as to prevent contamination of any surface with which milk or milk products come in contact. [1961 c 11 § 15.36.225. Prior: 1955 c 238 § 30; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.230 Grade A raw milk—Milking, udders and teats, abnormal milk. Milking shall be done in the milking barn or stable. The udders and teats of all milking cows shall be clean and wiped with an approved bactericidal solution immediately preceding the time of milking. Abnormal milk shall be kept out of the milk supply

and shall be so handled and disposed of as to preclude the infection of the cows and the contamination of milk utensils. [1961 c 11 § 15.36.230. Prior: 1955 c 238 § 31; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.235 Grade A raw milk—Milking—Flanks, bellies, and tails. The flanks, bellies, and tails of all milking cows shall be free from visible dirt at the time of milking. All brushing shall be completed before milking commences. [1961 c 11 § 15.36.235. Prior: 1955 c 238 § 32; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.240 Grade A raw milk—Milkers' hands. Milkers' hands shall be clean, rinsed with bactericidal solution, and dried with a clean towel immediately before milking and following any interruption in the milking operation. Wet-hand milking is prohibited. Convenient facilities shall be provided for the washing of milkers' hands. [1961 c 11 § 15.36.240. Prior: 1955 c 238 § 33; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.245 Grade A raw milk—Clean clothing. Milkers and milk handlers shall wear clean outer garments while milking or handling milk, milk products, containers, utensils, or equipment. [1961 c 11 § 15.36.245. Prior: 1955 c 238 § 34; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.250 Grade A raw milk—Milk stools. Milk stools shall be kept clean. [1961 c 11 § 15.36.250. Prior: 1955 c 238 § 35; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.255 Grade A raw milk—Removal of milk. Each pail or can of milk shall be removed immediately to the milk house or straining room. No milk shall be strained or poured in the barn unless it is protected from flies and other contamination. [1961 c 11 § 15.36.255. Prior: 1955 c 238 § 36; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.260 Grade A raw milk—Cooling. Milk and milk products for consumption in the raw state or for pasteurization shall be cooled within two hours of completion of milking to forty degrees Fahrenheit or less and maintained at that temperature until picked up, in accordance with RCW 15.36.110, so long as the blend temperature after the first and following milkings does not exceed fifty degrees Fahrenheit. [1984 c 226 § 5; 1961 c 11 § 15.36.260. Prior: 1955 c 238 § 37; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.265 Grade A raw milk—Bottling and capping. Milk and milk products for consumption in the raw state shall be bottled on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and these operations shall be integral in one machine. Caps or cap stock shall be

purchased in sanitary containers and kept therein in a clean dry place until used. [1961 c 11 § 15.36.265. Prior: 1955 c 238 § 38; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.270 Grade A raw milk—Personnel, health. The health officer or a physician authorized by him shall examine and take a careful morbidity history of every person connected with a producer-distributor dairy, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggest that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state health authorities for such examinations, and if the results justify such person shall be barred from such employment. [1961 c 11 § 15.36.270. Prior: 1955 c 238 § 39; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.280 Grade A raw milk—Vehicles—Surroundings. All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun, from freezing, and from contamination. All vehicles used for the distribution of milk and milk products shall have the distributor's name prominently displayed. Deck boards must be used when more than one deck of cans are transported.

The immediate surroundings of the dairy shall be kept clean and free of health menaces. [1961 c 11 § 15.36.280. Prior: 1955 c 238 § 40; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.290 Grade B raw milk—Standards. Grade B raw milk is raw milk which violates the bacterial standard requirement for grade A raw milk, but which conforms with all other requirements for grade A raw milk, and has a bacterial plate count not exceeding one hundred thousand per milliliter, as determined under RCW 15.36.110. [1981 c 297 § 4; 1961 c 11 § 15.36.290. Prior: 1955 c 238 § 41; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.36.300 Grade C raw milk—Standards. Grade C raw milk is raw milk of a producer-distributor which violates any of the requirements for grade B raw milk. [1961 c 11 § 15.36.300. Prior: 1955 c 238 § 42; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.310 Certified milk-pasteurized—Standards. Certified milk-pasteurized is certified milk-raw which has been pasteurized, cooled and bottled in a milk plant conforming with the requirements for grade A pasteurized milk. [1961 c 11 § 15.36.310. Prior: 1955 c 238 §

43; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.320 Grade A pasteurized milk—Standards. Grade A pasteurized milk is grade A raw milk for pasteurization which has been pasteurized, cooled and placed in the final container in a milk plant conforming with all of the items of sanitation contained in RCW 15.36.325 to 15.36.440, inclusive, which in all cases shows efficient pasteurization as evidenced by satisfactory phosphatase tests, and which at no time after pasteurization and until delivery has a bacterial plate count exceeding twenty thousand per milliliter or a positive coliform test in more than two out of four samples taken on separate days as determined in accordance with RCW 15.36.110: *Provided*, That the raw milk at no time between dumping and pasteurization, shall have a bacterial plate count exceeding three hundred thousand per milliliter.

The grading of a pasteurized-milk supply shall include the inspection of receiving and collection stations with respect to compliance with RCW 15.36.325 to 15.36.395, inclusive, and RCW 15.36.405, 15.36.415, 15.36.430 and 15.36.440, except that the partitioning requirement of RCW 15.36.345 shall not apply. [1981 c 297 § 5; 1961 c 11 § 15.36.320. Prior: 1955 c 238 § 44; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.36.325 Grade A pasteurized milk—Floors. The floors of all rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall be constructed of concrete or other equally impervious and easily cleaned material and shall be smooth, properly drained, provided with trapped drains, and kept clean and in good repair. [1961 c 11 § 15.36.325. Prior: 1955 c 238 § 45; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.330 Grade A pasteurized milk—Walls and ceiling. Walls and ceilings of rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall have a smooth, washable, light colored surface, and shall be kept clean and in good repair. [1961 c 11 § 15.36.330. Prior: 1955 c 238 § 46; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.335 Grade A pasteurized milk—Doors and windows. Unless other effective means are provided to prevent the access of flies, all openings to the outer air shall be effectively screened and all doors shall be self-closing. [1961 c 11 § 15.36.335. Prior: 1955 c 238 § 47; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.340 Grade A pasteurized milk—Lighting and ventilation. All rooms shall be well lighted and ventilated. [1961 c 11 § 15.36.340. Prior: 1955 c 238 § 48;

prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.345 Grade A pasteurized milk—Miscellaneous, protection from contamination. The various milk-plant operations shall be so located and conducted as to prevent any contamination of the milk or of the cleaned equipment. All means necessary for the elimination of flies, other insects and rodents shall be used. There shall be separate rooms for (1) the pasteurization, processing, cooling, and bottling operations, and (2) the washing and bactericidal treatment of containers. Cans of raw milk shall not be unloaded directly into the pasteurizing room. Pasteurized milk or milk products shall not be permitted to come in contact with equipment with which unpasteurized milk or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. Rooms in which milk, milk products, cleaned utensils, or containers are handled or stored shall not open directly into any stable or living quarters. The pasteurization plant shall be used for no other purposes than the processing of milk and milk products and the operations incident thereto, except as may be approved by the director. [1961 c 11 § 15.36.345. Prior: 1955 c 238 § 49; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.350 Grade A pasteurized milk—Toilet facilities. Every milk plant shall be provided with toilet facilities approved by the director. Toilet rooms shall not open directly into any room in which milk, milk products, equipment, or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well ventilated. A placard containing RCW 15.36.520 and a sign directing employees to wash their hands before returning to work shall be posted in all toilet rooms used by employees. [1961 c 11 § 15.36.350. Prior: 1955 c 238 § 50; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.355 Grade A pasteurized milk—Water supply. The water supply shall be easily accessible, adequate, and of a safe sanitary quality according to standards approved by the state board of health. [1961 c 11 § 15.36.355. Prior: 1955 c 238 § 51; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.360 Grade A pasteurized milk—Hand-washing facilities. Convenient hand-washing facilities shall be provided, including hot and cold running water, soap, and approved sanitary towels. Hand-washing facilities shall be kept clean. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands. [1961 c 11 § 15.36.360. Prior: 1955 c 238 § 52; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.365 Grade A pasteurized milk—Sanitary piping. All piping used to conduct milk or milk products

shall be "sanitary milk piping" of a type which can be easily cleaned with a brush. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary milk piping. [1961 c 11 § 15.36.365. Prior: 1955 c 238 § 53; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.370 Grade A pasteurized milk—Construction and repair of containers and equipment. All multi-use containers and equipment with which milk or milk products come in contact shall be so constructed and located as to be easily cleaned and shall be kept in good repair. All single-service containers, closures and gaskets used shall have been manufactured, packaged, transported and handled in a sanitary manner. [1961 c 11 § 15.36.370. Prior: 1955 c 238 § 54; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.375 Grade A pasteurized milk—Plumbing and disposal of wastes. All wastes shall be properly disposed of. All plumbing and equipment shall be so designed and installed as to prevent contamination of the water supply and of milk equipment by backflow or siphonage. [1961 c 11 § 15.36.375. Prior: 1955 c 238 § 55; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.380 Grade A pasteurized milk—Cleaning and bactericidal treatment of containers and equipment. All milk and milk products containers, including tank trucks and tank cars and all equipment, except single-service containers, shall be thoroughly cleaned after each usage. All such containers shall be effectively subjected to an approved bactericidal process after each cleaning and all equipment immediately before each usage. When empty and before being returned to a producer or distributor by a milk plant each container, including tank trucks and tank cars, shall be thoroughly cleaned and effectively subjected to an approved bactericidal process. [1961 c 11 § 15.36.380. Prior: 1955 c 238 § 56; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.385 Grade A pasteurized milk—Storage of containers and equipment. After bactericidal treatment all bottles, cans, and other multi-use milk or milk products containers and equipment shall be stored in such manner as to be protected from contamination. [1961 c 11 § 15.36.385. Prior: 1955 c 238 § 57; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266–36, part.]

15.36.390 Grade A pasteurized milk—Handling of containers and equipment. Between bactericidal treatment and usage and during usage, containers and equipment shall be handled or operated in such manner as to prevent contamination of the milk. Pasteurized milk or milk products shall not be permitted to come in contact with equipment with which unpasteurized milk or milk products have been in contact, unless the equipment has first been thoroughly cleaned and effectively subjected to

an approved bactericidal process. No milk or milk products shall be permitted to come in contact with equipment with which a lower grade of milk or milk products has been in contact, unless the equipment has first been thoroughly cleaned and effectively subjected to an approved bactericidal process. [1961 c 11 § 15.36.390. Prior: 1955 c 238 § 58; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.395 Grade A pasteurized milk—Storage of caps, parchment paper, and single service containers. Milk bottle caps or cap stock, parchment paper for milk cans and single service containers and gaskets shall be purchased and stored only in sanitary tubes, wrappings, and cartons, and shall be kept therein in a clean, dry place, and shall be handled in a sanitary manner. [1961 c 11 § 15.36.395. Prior: 1955 c 238 § 59; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.400 Grade A pasteurized milk—Pasteurization. Pasteurization shall be performed as described in RCW 15.36.020. [1961 c 11 § 15.36.400. Prior: 1955 c 238 § 60; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.405 Grade A pasteurized milk—Cooling. All milk and milk products received for pasteurization shall immediately be cooled in approved equipment to fifty degrees Fahrenheit or less and maintained at that temperature until pasteurized, unless they are to be pasteurized within two hours after receipt; and all pasteurized milk and milk products except those to be cultured shall be immediately cooled in approved equipment to a temperature of fifty degrees Fahrenheit or less and maintained thereat until delivery, as determined in accordance with RCW 15.36.110. [1961 c 11 § 15.36.405. Prior: 1955 c 238 § 61; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.410 Grade A pasteurized milk—Bottling. Bottling of milk or milk products shall be done at the place of pasteurization in approved mechanical equipment. [1961 c 11 § 15.36.410. Prior: 1955 c 238 § 62; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.415 Grade A milk—Overflow milk—Come-back milk. Overflow milk or milk products shall not be sold for human consumption. Come-back milk shall not be sold or used for fluid milk or fluid cream. [1961 c 11 § 15.36.415. Prior: 1955 c 238 § 63; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.420 Grade A pasteurized milk—Capping. Capping of milk or milk products shall be done by approved mechanical equipment. Hand capping is prohibited. The cap or cover shall cover the pouring lip to at least its largest diameter. [1961 c 11 § 15.36.420. Prior: 1955 c 238 § 64; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.425 Grade A pasteurized milk—Personnel, health. The health officer or a physician authorized by him shall examine and take careful morbidity history of every person connected with a pasteurization plant, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history suggests that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state department of social and health services for such examinations, and if the results justify such persons shall be barred from such employment.

Such persons shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the health officer may require for the purpose of determining freedom from infection. [1979 c 141 § 22; 1961 c 11 § 15.36.425. Prior: 1955 c 238 § 65; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.430 Grade A pasteurized milk—Personnel, cleanliness. All persons coming in contact with milk, milk products, containers or equipment shall wear clean, washable, light colored outer garments and shall keep their hands clean at all times while thus engaged. [1961 c 11 § 15.36.430. Prior: 1955 c 238 § 66; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.440 Grade A pasteurized milk—Vehicles. All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun, from freezing, and from contamination. All vehicles used for distribution of milk or milk products shall have the name of the distributor prominently displayed.

Milk tank cars and tank trucks shall comply with construction, cleaning, bactericidal treatment, storage, and handling requirements of RCW 15.36.365, 15.36.370, 15.36.380, 15.36.385 and 15.36.390. While containing milk or cream they shall be sealed and labeled in an approved manner. [1961 c 11 § 15.36.440. Prior: 1955 c 238 § 67; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.450 Grade B pasteurized milk—Standards. Grade B pasteurized milk is pasteurized milk which violates the bacterial standard for grade A pasteurized milk and/or the provisions of lipcover caps of RCW 15.36.420 and/or the requirement that grade A raw milk for pasteurization be used, but which conforms with all other requirements for grade A pasteurized milk, has been made from raw milk for pasteurization of not less than grade B quality, and has a bacterial plate count after pasteurization and before delivery not exceeding forty thousand per milliliter as determined in accordance with RCW 15.36.110. [1961 c 11 § 15.36.450. Prior:

1955 c 238 § 68; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.460 Grade C pasteurized milk—Standards. Grade C pasteurized milk is pasteurized milk which violates any of the requirements for grade B pasteurized milk. [1961 c 11 § 15.36.460. Prior: 1955 c 238 § 69; prior: 1949 c 168 § 7, part; Rem. Supp. 1949 § 6266-36, part.]

15.36.470 Grades of milk and milk products which may be sold. No milk or milk products shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments except certified milk pasteurized, certified raw-milk, grade A milk pasteurized, or grade A milk-raw, and the director may revoke the permit of any milk distributor failing to qualify for one of the above grades, or in lieu thereof may degrade his product and permit its sale during a period not exceeding thirty days or in emergencies during such longer period as he may deem necessary. [1961 c 11 § 15.36.470. Prior: 1949 c 168 § 8; Rem. Supp. 1949 § 6266-37.]

15.36.480 Reinstatement of permit—Supplementary regrading. If at any time between the regular announcements of the grades of milk or milk products, a lower grade shall become justified, in accordance with RCW 15.36.100, 15.36.110, and 15.36.120 to 15.36.460, inclusive, the director shall immediately lower the grade of such milk or milk products, and shall enforce proper labeling thereof.

Any producer or distributor of milk or milk products the grade of which has been lowered by the director, and who is properly labeling his milk and milk products, or whose permit has been suspended may at any time make application for the regrading of his products or the reinstatement of his permit.

Upon receipt of a satisfactory application, in case the lowered grade or the permit suspension was the result of violation of the bacteriological or cooling temperature standards, the director shall take further samples of the applicant's output, at a rate of not more than two samples per week. The director shall regrade the milk or milk products upward or reinstate the permit on compliance with grade requirements as determined in accordance with the provisions of RCW 15.36.110.

In case the lowered grade of the applicant's product or the permit suspension was due to a violation of an item other than bacteriological standard or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications had been conformed with. Within one week of the receipt of such an application and statement the director shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant is again complying with the higher grade requirements, and in case the findings justify, shall regrade the milk or milk products upward

or reinstate the permit. [1961 c 11 § 15.36.480. Prior: 1949 c 168 § 9; Rem. Supp. 1949 § 6266-37a.]

15.36.490 Transferring, mixing, or dipping milk or cream—Delivery containers—Cooling—Quarantined residences. Except as permitted in this section, no milk producer or distributor shall transfer milk or milk products from one container to another on the street, or in any vehicle, or store, or in any place except a bottling or milk room especially used for that purpose.

Milk and milk products sold in the distributor's containers in quantities less than one gallon shall be delivered in standard milk bottles or in single-service containers. It shall be unlawful for hotels, soda fountains, restaurants, groceries, hospitals, and similar establishments to sell or serve any milk or milk products except in the individual original container in which it was received from the distributor or from a bulk container equipped with an approved dispensing device: *Provided*, That this requirement shall not apply to cream consumed on the premises, which may be served from the original bottle or from a dispenser approved for such service.

It shall be unlawful for any hotel, soda fountain, restaurant, grocery, hospital, or similar establishment to sell or serve any milk or milk product which has not been maintained, while in its possession, at a temperature of fifty degrees Fahrenheit or less. If milk or milk products are stored in water for cooling, the pouring lip of the container shall not be submerged.

It shall be the duty of all persons to whom milk or milk products are delivered to clean thoroughly the containers in which such milk or milk products are delivered before returning such containers. Apparatus, containers, equipment, and utensils used in the handling, storage, processing, or transporting of milk or milk products shall not be used for any other purpose without the permission of the director.

The delivery of milk or milk products to and the collection of milk or milk products containers from residences in which cases of communicable disease transmissible through milk supplies exists shall be subject to the special requirements of the health officer.

Homogenized milk or homogenized cream shall not be mixed with milk or cream which has not been homogenized if sold or offered for sale as fluid milk or cream. [1961 c 11 § 15.36.490. Prior: 1949 c 168 § 10; Rem. Supp. 1949 § 6266-38.]

15.36.500 Sale of out-of-state milk and milk products. Milk and milk products from outside the state may not be sold in the state of Washington unless produced and/or pasteurized under provisions equivalent to the requirements of this chapter: *Provided*, That the director shall satisfy himself that the authority having jurisdiction over the production and processing is properly enforcing such provisions. [1961 c 11 § 15.36.500. Prior: 1949 c 168 § 11; Rem. Supp. 1949 § 6266-39.]

15.36.510 Dairies and milk plants constructed or altered after June 8, 1949. All dairies and milk plants

from which milk or milk products are supplied which are constructed, reconstructed, or extensively altered after June 8, 1949, shall conform in their construction to the grade A requirements of this chapter. Properly prepared plans for all dairies and milk plants which are thereafter constructed, reconstructed or extensively altered shall be submitted to the director for approval before work is begun. In the case of milk plants signed approval shall be obtained from the director. [1961 c 11 § 15.36.510. Prior: 1949 c 168 § 12; Rem. Supp. 1949 § 6266-40.]

15.36.520 Personnel, health—Notification of disease. No person who is affected with any disease in a communicable form or is a carrier of such disease shall work at any dairy farm or milk plant in any capacity which brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment; and no dairy farm or milk plant shall employ in any such capacity any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. Any producer or distributor of milk or milk products upon whose dairy farm or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease shall notify the health officer immediately. [1961 c 11 § 15.36.520. Prior: 1949 c 168 § 13; Rem. Supp. 1949 § 6266-41.]

15.36.530 Personnel, health—Procedure when infection suspected. When suspicion arises as to the possibility of transmission of infection from any person concerned with the handling of milk or milk products, the health officer is authorized to require any or all of the following measures: (1) The immediate exclusion of the milk supply concerned from distribution and use, (2) the immediate exclusion of that person from milk handling, (3) adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges. [1961 c 11 § 15.36.530. Prior: 1949 c 168 § 14; Rem. Supp. 1949 § 6266-42.]

15.36.540 Federal milk code interpretation to govern. Save as in this chapter provided this law shall be enforced by the director in accordance with the interpretation contained in the 1965 edition of the United States public health service milk code: *Provided*, That the director may by rule adopt any subsequent amendments to such code as interpretations for the enforcement of this chapter whenever he determines that any such amendments are necessary to carry out the purposes of RCW 15.32.120, 15.36.011, 15.36.075, 15.36.540 and 15.36.600. [1969 ex.s. c 102 § 6; 1961 c 11 § 15.36.540. Prior: 1949 c 168 § 15; Rem. Supp. 1949 § 6266-44.]

15.36.550 Rules and regulations—Standards. The director shall have the power and duty (1) to adopt, issue and promulgate from time to time necessary rules, regulations and orders for the enforcement of this chapter; (2) with the approval of the secretary of social and health services to adopt standards of requirements necessary for approval of local milk inspection service units

hereinafter provided for, the basic standards in this connection being a sufficient force of qualified personnel under the general direction of a health officer, and sufficient laboratory facilities to insure compliance with the provisions of this chapter and the rules and regulations promulgated thereunder; and (3) to cancel, and with the consent of the secretary of social and health services, to approve the issuance of certificates of approval for such local milk inspection service units. [1979 c 141 § 23; 1961 c 11 § 15.36.550. Prior: 1949 c 168 § 16; Rem. Supp. 1949 § 6266-44.]

15.36.560 Local milk inspection service units. Any city, township, or county desiring to maintain and operate a local milk inspection service unit shall make application in writing to the director for a certificate of approval. Upon receipt of such application the director shall investigate and determine whether the city, township, or county is entitled to approval in the maintenance and operation of a local milk inspection service unit, and if so the director, with the consent and approval of the secretary of social and health services, shall issue the certificate applied for. The boundaries of jurisdiction of the local milk inspection service unit shall be defined by the director after investigation and consultation with the health officer of the local milk inspection service unit taking into consideration among other things the geographical convenience of the area and the amount of fluid milk and fluid milk products sold or delivered within the area. Upon receipt of such certificate of approval the local milk inspection service unit shall have full authority through the health officer to perform all of the duties relative to the enforcement of the provisions of this chapter and to the issuing, suspension and revocation of permits within the defined jurisdiction of such local milk inspection service unit. Any certificate of approval may be canceled by the director after thirty days notice in writing to the holder of the certificate of approval should the local milk inspection service unit be found incompetent, inadequate, improper or remiss in any particular. [1979 c 141 § 24; 1961 c 11 § 15.36.560. Prior: 1949 c 168 § 17; Rem. Supp. 1949 § 6266-45.]

15.36.570 Designation of additional inspection units. Whenever a milk producer or milk distributor intends to deliver or sell fluid milk or fluid cream outside the jurisdiction of his own local milk inspection service unit, the director, on application and after investigation and consultation with the health officer of each local milk inspection service unit concerned, shall designate which local milk inspection service unit shall conduct the inspections. The director, in making such designations, shall in addition to other matters considered by him, take into consideration the geographical convenience of each local milk inspection service unit and the percentage of fluid milk or fluid cream sold and/or delivered within the jurisdiction of such local milk inspection service units. All fluid milk and fluid milk products so inspected may be sold and delivered within the jurisdiction of any local milk inspection service unit: *Provided*, That

applicable ordinances of political subdivisions of government in said jurisdiction more stringent than, and not inconsistent with, the provisions of this chapter are not thereby violated. The local milk inspection service unit designated by the director to render such inspection service shall issue permits in accordance with applicable provisions of all local ordinances of each city, township, or county into which fluid milk or fluid milk products are sold or delivered. [1961 c 11 § 15.36.570. Prior: 1949 c 168 § 18, part; Rem. Supp. 1949 § 6266-46, part.]

15.36.580 Hearing of protests—Findings and order—Appeal. In case of a written protest from any fluid milk producer, fluid milk distributor, or health officer, concerning the enforcement of any provisions of this chapter or of any rules and regulations thereunder, the director, or an administrative law judge within ten days after receipt of such protest and after five days written notice thereof to the party against whom the protest is made, shall hold a summary hearing in the county where either the party protesting or protested against resides, upon the completion of which the director or an administrative law judge shall make such written findings of fact and order as the circumstances may warrant: *Provided*, That if the protest originates with a producer, the hearings shall be held in the county where the protesting producer resides. Such findings and order shall be final and conclusive upon all parties from and after their effective date, which date shall be five days after being signed and deposited postage prepaid in the United States mails addressed to the last known address of all said parties. An appeal from such findings or order may be taken in the manner provided under chapter 34.04 RCW. [1987 c 202 § 175; 1981 c 67 § 17; 1961 c 11 § 15.36.580. Prior: 1949 c 168 § 18, part; Rem. Supp. 1949 § 6266-46, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

15.36.590 Penalty. Any person who shall violate or fail to comply with the provisions of this chapter or the rules, regulations or orders, issued under the authority of this chapter shall be guilty of a misdemeanor. [1961 c 11 § 15.36.590. Prior: 1949 c 168 § 19; Rem. Supp. 1949 § 6266-48.]

15.36.595 Violations of standards for component parts of fluid dairy products—Civil penalty—Procedure. (1) The director of agriculture shall adopt rules imposing a civil penalty for violations of the standards for component parts of fluid dairy products which are established by RCW 15.36.030 or adopted pursuant to RCW 69.04.398. The penalty shall not exceed ten thousand dollars and shall be such as is necessary to achieve proper enforcement of the standards. The rules shall be adopted before January 1, 1987, and shall become effective on July 1, 1987.

(2) The penalty is imposed by the department giving a written notice which is either personally served upon or

transmitted by certified mail, return receipt requested, to the person incurring the penalty. The notice of the civil penalty shall be a final order of the department unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the department. If a notice of appeal is filed in a timely manner, a contested case hearing shall be conducted on behalf of the department by the office of administrative hearings in accordance with chapters 34.04 and 34.12 RCW and, to the extent they are not inconsistent with this subsection, the provisions of RCW 15.36.580. At the conclusion of the hearing, the department shall determine whether the penalty should be affirmed, reduced, or not imposed and shall issue a final order setting forth the civil penalty assessed, if any. The order may be appealed to superior court in accordance with chapter 34.04 RCW. Tests performed for the component parts of milk products by a state laboratory of a milk sample collected by a department official shall be admitted as prima facie evidence of the amounts of milk components in the product.

(3) Any penalty imposed under this section is due and payable upon the issuance of the final order by the department.

(4) All penalties received or recovered from violations of this section shall be remitted by the violator to the department and deposited in the revolving fund of the Washington state dairy products commission. One-half of the funds received shall be used for purposes of education with the remainder one-half to be used for dairy processing and/or marketing research. No appropriation is required for disbursements from this fund.

(5) In case of a violation of the standards for the composition of milk products, an investigation shall be made to determine the cause of the violation which shall be corrected. Additional samples shall be taken as soon as possible and tested by the department. [1986 c 203 § 19.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.36.600 Violations may be enjoined. The director may bring an action to enjoin the violation of any provision of chapters 15.36 and 15.38 RCW or any rule adopted thereunder in the superior court of the county in which the defendant resides or maintains his principal place of business, notwithstanding any other remedy at law. [1969 ex.s. c 102 § 4.]

15.36.900 Chapter to be construed as cumulative. Except as expressly provided, nothing in this chapter shall be construed as effecting or being intended to effect a repeal of chapter 15.32 RCW, or of any part or provision of such chapter 15.32 RCW, and if any section or part of a section in this chapter shall be found to contain, cover or effect any matter, topic, or thing which is also contained in, covered in or effected by chapter 15.32 RCW, or by any part thereof, the prohibitions, mandates, directions, and regulations hereof, and the penalties, powers, and duties herein prescribed shall be construed to be additional to those prescribed in chapter 15.32 RCW and not substitutions therefor. [1961 c 11 §

15.36.900. Prior: 1949 c 168 § 23; Rem. Supp. 1949 § 6266-49. Formerly RCW 15.36.600.]

Chapter 15.37

MILK AND MILK PRODUCTS FOR ANIMAL FOOD

Sections

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15.37.150	Penalty.
15.37.900	Severability—1961 c 285.

15.37.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural, as the case may be. [1961 c 285 § 1.]

15.37.020 Enforcement of chapter—Rules, subject to administrative procedure act. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.04 RCW, concerning the adoption of rules, as enacted or hereafter amended. [1961 c 285 § 2.]

15.37.030 Minimum conditions for sale, etc.—When license required—Expiration date of license. It shall be unlawful for any person to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk, for animal food consumption, which does not meet, or has not been produced and handled under conditions prescribed for grade A milk as provided in chapter 15.36 RCW as enacted or hereafter amended, without first obtaining an annual license from the director which shall expire on June 30th following the date of issuance unless revoked prior thereto by the director for cause. [1961 c 285 § 3.]

15.37.040 Application, issuance of license. Application for a license shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for the license.

(2) If such applicant is a 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.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person domiciled in this state authorized to receive and accept service or legal notice of all kinds.

(5) Any other information prescribed by the director necessary to carry out the purposes and provisions of this chapter.

The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and rules adopted hereunder and that such applicant has paid the required fee. [1961 c 285 § 4.]

15.37.050 License fee on application. The application for an annual license to sell, offer for sale, hold for sale, or advertise for sale, trade, barter, or to give as an inducement for the sale of another product, milk, cream, or skim milk for animal food consumption shall be accompanied by a license fee of twenty-five dollars. [1961 c 285 § 5.]

15.37.060 Penalty for delinquency on renewal of license. If an application for renewal of a license provided for in RCW 15.37.030 is not filed prior to July 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not sold, offered for sale, held for sale, or advertised for sale, milk, cream, or skim milk for animal food consumption subsequent to the expiration of his prior license. [1961 c c 285 § 6.]

15.37.070 Denial, suspension, revocation of license. The director is authorized to deny, suspend, or revoke the license provided for in RCW 15.37.030 subsequent to a hearing in any case in which he finds that there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [1961 c 285 § 7.]

15.37.080 Denial, suspension, revocation of license—Hearings subject to administrative procedure act. All hearings for a denial, suspension, or revocation of a license provided for in RCW 15.37.030 shall be subject to the provisions of chapter 34.04 RCW, concerning contested cases, as enacted or hereafter amended. [1961 c 285 § 8.]

15.37.090 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records in the county in which the person licensed under

this chapter resides in any hearing affecting the authority or privileges granted by a license issued under the provisions of this chapter. Witnesses, except complaining witnesses, shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1961 c 285 § 9.]

15.37.100 Coloring of milk in containers, when required. It shall be unlawful for any person to sell, offer for sale, hold for sale, advertise for sale, trade, barter, or to give as an inducement for the sale of another product, any milk, cream, or skim milk, for animal food consumption which does not meet, or has not been produced under conditions prescribed for grade A milk, as prescribed in chapter 15.36 RCW as enacted or hereafter amended and rules adopted thereunder, and the applicable provisions of chapter 69.04 RCW (the Food, Drug and Cosmetic Act) as enacted and hereafter amended and rules adopted thereunder, in containers provided either by the vendor or vendee and which are capable of holding less than twenty liquid quarts, unless such milk, cream, or skim milk has been decharacterized with a color prescribed by the director which will not affect its nutritive value for animal food. [1961 c 285 § 10.]

15.37.110 Labels on containers—Contents. It shall be unlawful to sell, offer for sale, hold for sale, trade, barter, or to offer as an inducement for the sale of another product, milk, cream, or skim milk subject to the provisions of this chapter in containers which are not labeled in a conspicuous location readily visible to any person handling such containers with the following:

- (1) The name and address of the producer or distributor in letters not less than one-fourth inch in size.
- (2) The name of the contents in letters not less than one-fourth inch in size.
- (3) The words "not for human consumption" in letters at least one-half inch in size.
- (4) The words "decharacterized with harmless food coloring" in letters not less than one-fourth inch in size. [1961 c 285 § 11.]

15.37.120 Entry on premises. The director or his duly authorized representative may enter, during reasonable business hours, any premise where milk, cream, or skim milk subject to the provisions of this chapter is produced, handled, distributed, sold, offered for sale, held for sale, or used for the inducement of the sale of another product to determine if such milk, cream, or skim milk has been properly decharacterized as provided in RCW 15.37.100 or rules adopted hereunder. No person shall interfere with the director or his duly authorized representative when he is performing or carrying out the duties imposed on him by this chapter or rules adopted hereunder. [1961 c 285 § 12.]

15.37.130 Injunctions authorized. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court of

Thurston county, notwithstanding the existence of any other remedy at law. [1961 c 285 § 13.]

15.37.140 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1961 c 285 § 14.]

15.37.150 Penalty. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor. [1961 c 285 § 15.]

15.37.900 Severability—1961 c 285. 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. [1961 c 285 § 16.]

Chapter 15.38 FILLED DAIRY PRODUCTS

Sections	
15.38.001	Declaration of purpose.
15.38.010	Definitions and exclusions.
15.38.020	Filled dairy products prohibited.
15.38.030	Duties of director of agriculture.
15.38.040	Injunction—Seizure—Products deemed adulterated.
15.38.045	Violations may be enjoined.
15.38.050	Penalties.

Adoption of rules concerning: RCW 15.36.011.

15.38.001 Declaration of purpose. Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products creates a condition conducive to substitution, confusion, deception, and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this chapter to correct and eliminate the condition above referred to; to protect the public from confusion, fraud and deception; to prohibit practices inimical to the general welfare; and to promote the orderly and fair marketing of essential foods. [1961 c 11 § 15.38.001. Prior: 1951 c 20 § 1.]

15.38.010 Definitions and exclusions. Whenever used in this chapter:

(1) The term "person" includes individuals, firms, partnerships, associations, trusts, estates, corporations, and any and all other business units, devices or arrangements.

(2) The term "filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food

product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to, milk, cream, sour cream, skimmed milk, ice cream, whipped cream, flavored milk or skim-milk, dried or powdered milk, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk: *Provided, However,* That this term shall not be construed to mean or include:

(a) Oleomargarine;

(b) Any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) Any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used;

(d) Any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed one one-hundredths of one percent of the weight of the finished dairy product;

(e) Any cheese product or cheese; or

(f) Any cream sauce added to processed vegetables.

(3) The term "intrastate commerce" means any and all commerce within the state of Washington subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1979 c 154 § 21; 1961 c 11 § 15.38.010. Prior: 1951 c 20 § 2.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.38.020 Filled dairy products prohibited. (1) It shall be unlawful in intrastate commerce for any person to manufacture, sell, exchange, purvey, transport or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product;

(2) It shall be unlawful for any person owning or operating a bakery, confectionery shop, factory or other place where food products are prepared or manufactured for sale, exchange or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared;

(3) It shall be unlawful in intrastate commerce for any person knowingly to sell, exchange, purvey, transport or possess any food product in which any filled dairy product is an ingredient. [1961 c 11 § 15.38.020. Prior: 1951 c 20 § 3.]

15.38.030 Duties of director of agriculture. The director of agriculture is authorized and directed:

(1) To administer and supervise the enforcement of this chapter;

(2) To provide for such periodic inspections and investigations as he may deem necessary to disclose violations;

(3) To receive and provide for the investigation of complaints;

(4) To provide for the institution and prosecution of civil or criminal actions, or both. [1961 c 11 § 15.38.030. Prior: 1951 c 20 § 5.]

15.38.040 Injunction—Seizure—Products deemed adulterated. The provisions of this chapter may be enforced by injunction brought by any private person, firm, or corporation or by a municipal corporation or agent or subdivision thereof, in any court having jurisdiction to grant injunctive relief.

Filled dairy products illegally held or otherwise involved in a violation of this chapter shall be subject to seizure and disposition in accordance with an appropriate court order.

In addition, all filled dairy products as defined herein and all food products containing filled dairy products as an ingredient are hereby declared to be adulterated for all purposes of law including all the purposes of the Washington uniform food, drug and cosmetic act, RCW 69.04.001 to 69.04.870, inclusive. [1961 c 11 § 15.38.040. Prior: 1951 c 20 § 6.]

15.38.045 Violations may be enjoined. See RCW 15.36.600.

15.38.050 Penalties. Any person who shall violate any of the provisions of this chapter, and any officer, agent or employee thereof who directs or knowingly permits such violation or who aids or assists therein, shall, upon conviction thereof, be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars: *Provided,* That if such violation is committed after a previous conviction of such person hereunder has become final, such person shall be guilty of a gross misdemeanor and shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or to imprisonment for not more than ninety days, or both. Each separate violation shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey the provisions of this chapter, each day of continuance of such failure or neglect shall be deemed a separate offense. [1961 c 11 § 15.38.050. Prior: 1951 c 20 § 4.]

Chapter 15.40

OLEOMARGARINE—1949 ACT

Sections	
15.40.010	Definitions.
15.40.030	Advertising of oleomargarine—Dairy terms prohibited.
15.40.040	Enforcement—Powers and duties of director of agriculture.
15.40.050	Penalty for violations.
15.40.900	Preamble.

15.40.010 Definitions. The term "oleomargarine" as used in this chapter includes:

(1) All substances, mixtures and compounds known as oleomargarine, margarine, oleo or butterine;

(2) All substances, mixtures and compounds which have a consistency similar to that of butter and which

contains any edible oils or fats other than milk fat, if (a) made in imitation or semblance of butter, or purporting to be butter or a butter substitute; or (b) commonly used, or intended for common use, in place of or as a substitute for butter; or (c) churned, emulsified or mixed in cream, milk, skim milk, buttermilk, water or other liquid and containing moisture in excess of one percent and commonly used, or suitable for common use, as a substitute for butter.

For the purposes of this chapter "yellow oleomargarine" is oleomargarine as defined in this section, having a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, measured in terms of the Lovibond tintometer scale or the equivalent of such measurement when the Lovibond tintometer is read under conditions similar to those established by the United States bureau of internal revenue. [1961 c 11 § 15.40.010. Prior: 1949 c 13 § 1; Rem. Supp. 1949 § 6248-1.]

15.40.030 Advertising of oleomargarine—Dairy terms prohibited. It shall be unlawful in connection with the labeling, selling, or advertising of oleomargarine to use dairy terms, or words or designs commonly associated with dairying or dairy products, except to the extent that such words or terms are necessary to meet legal requirements for labeling. [1961 c 11 § 15.40.030. Prior: 1949 c 13 § 2(b); Rem. Supp. 1949 § 6248-2(b).]

15.40.040 Enforcement—Powers and duties of director of agriculture. The director is authorized and directed to administer and supervise the enforcement of this chapter; to prescribe rules and regulations to carry out its purposes; to provide for such periodic inspections and investigations as he may deem necessary to disclose violations; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions, or both. The provisions of this chapter and the rules and regulations issued in connection therewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and yellow oleomargarine illegally held or otherwise involved in a violation of this chapter or of said rules and regulations shall be subject to seizure and disposition in accordance with an order of court. [1961 c 11 § 15.40.040. Prior: 1949 c 13 § 3; Rem. Supp. 1949 § 6248-3.]

15.40.050 Penalty for violations. Any person, firm, or corporation that violates any of the provisions of this chapter, or of the rules and regulations issued in connection therewith, and any officer, agent, or employee thereof who directs or knowingly permits such violation, or who aids or assists therein, shall be guilty of a misdemeanor. [1961 c 11 § 15.40.050. Prior: 1949 c 13 § 4; Rem. Supp. 1949 § 6248-4.]

15.40.900 Preamble. Yellow oleomargarine resembles butter so closely that it lends itself readily to substitution for or confusion with butter and in many cases cannot be distinguished from butter by the ordinary consumer. The manufacture, sale or serving of yellow

oleomargarine creates a condition conducive to substitution, confusion, deception and fraud, and one which if permitted to exist tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state.

It is hereby declared to be the purpose of this chapter to correct and eliminate the condition above referred to, protect the public from confusion, fraud and deception, prohibit practices inimical to the general welfare, and promote the orderly and fair marketing of essential foods, without an additional tax burden. [1961 c 11 § 15.40.900. Prior: 1949 c 13 Preamble; no RRS.]

Chapter 15.41

OLEOMARGARINE—1953 ACT

Sections

15.41.010	Declaration of purpose.
15.41.020	Repeal of prohibition against manufacture, transportation, sale, etc., of yellow oleomargarine.

15.41.010 Declaration of purpose. The purpose of this chapter is to legalize the manufacture, transportation, handling, possession, sale, use or serving of yellow oleomargarine. The term oleomargarine shall have the same meaning as given in RCW 15.40.010. [1961 c 11 § 15.41.010. Prior: 1953 c 1 § 1 (Initiative Measure No. 180, approved November 4, 1952).]

15.41.020 Repeal of prohibition against manufacture, transportation, sale, etc., of yellow oleomargarine. Section 15.40.020, RCW, as derived from section 2(a), chapter 13, Laws of 1949 is hereby repealed. [1961 c 11 § 15.41.020. Prior: 1953 c 1 § 2 (Initiative Measure No. 180; approved November 4, 1952).]

Reviser's note: The repealed section, RCW 15.40.020, read as follows: "The manufacture, transportation, handling, possession, sale, use or serving of yellow margarine is hereby prohibited: *Provided*, That nothing herein contained shall be construed to prohibit the use of yellow oleomargarine in private homes."

Chapter 15.44

DAIRY PRODUCTS COMMISSION

Sections

15.44.010	Definitions.
15.44.020	Commission created—Composition.
15.44.027	Commission districts and boundaries.
15.44.030	Member qualifications.
15.44.032	Terms—Vacancies.
15.44.033	Nomination and election procedure.
15.44.035	Producer lists.
15.44.037	Reimbursement of election costs.
15.44.038	Quorum—Compensation—Travel expenses.
15.44.040	Copies of records as evidence.
15.44.050	Manager—Secretary—treasurer—Treasurer's bond.
15.44.060	Powers and duties.
15.44.070	Rules, regulations and orders, publication.
15.44.080	Assessments on milk and cream—Amounts—Increases—Producer referendum.
15.44.085	Assessments on class I or class II milk.
15.44.087	Class I and class II milk defined.
15.44.090	Collection of assessments—Lien.

15.44.100	Records of dealers, shippers—Preservation—Inspection.
15.44.110	Reports of dealers, shippers, to commission.
15.44.130	Research, advertising, educational campaign—Increase or decrease of assessments—Procedure.
15.44.135	Promotional printing and literature—Contracts.
15.44.140	Authority to enter and inspect records.
15.44.150	Nonliability for commission acts.
15.44.160	Enforcement of chapter.
15.44.170	Penalty.
15.44.180	Jurisdiction of courts.
15.44.900	Purpose of chapter.
15.44.910	Liberal construction.

15.44.010 Definitions. As used in this chapter:

"Commission" means the Washington state dairy products commission;

To "ship" means to deliver or consign milk or cream to a person dealing in, processing, distributing, or manufacturing dairy products for sale, for human consumption or industrial or medicinal uses;

"Handler" means one who purchases milk, cream, or skimmed milk for processing, manufacturing, sale, or distribution;

"Dealer" means one who handles, ships, buys, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products;

"Processor" means a person who uses milk or cream for canning, drying, manufacturing, preparing, or packaging or for use in producing or manufacturing any product therefrom;

"Producer" means a person who produces milk from cows and sells it for human or animal food, or medicinal or industrial uses;

"Maximum authorized assessment rate" means the level of assessment most recently approved by a referendum of producers;

"Current level of assessment" means the level of assessment paid by the producer as set by the commission which cannot exceed the maximum authorized assessment rate. [1985 c 261 § 17; 1979 ex.s. c 238 § 1; 1961 c 11 § 15.44.010. Prior: 1939 c 219 § 2; RRS § 6266-2.]

Severability—1979 ex.s. c 238: "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." [1979 ex.s. c 238 § 27.]

15.44.020 Commission created—Composition.

There is hereby created a Washington state dairy products commission to be thus known and designated: *Provided*, That the commission may take actions under the name, "the dairy farmers of Washington". The commission shall be composed of not more than ten members. There shall be one member from each district who shall be a practical producer of dairy products to be elected by such producers, one member shall be a dealer, and one member shall be a producer who also acts as a dealer, and such dealer and producer who acts as a dealer shall be appointed by the director of agriculture, and the director of agriculture shall be an ex officio member without vote. [1979 ex.s. c 238 § 2; 1975 1st ex.s. c 136 § 1; 1965 ex.s. c 44 § 2; 1961 c 11 § 15.44.020. Prior: 1959 c 163 § 2; prior: (i) 1939 c 219 § 3,

part; RRS § 6266-3, part. (ii) 1939 c 219 § 4, part; RRS § 6266-4, part.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.027 Commission districts and boundaries. The commission shall delete, combine, revise, amend, or modify in any manner commission districts and boundaries by regulation as required and in accordance with the intent and provisions of this section. Commission districts established by statute prior to September 8, 1975 shall remain in effect until superseded by such regulations.

The boundaries of the commission districts shall be maintained in a manner that assures each producer a representation in the commission which is reasonably equal with the representation afforded all other producers by their commission members.

The commission shall, when requested in accordance with the provisions of the administrative procedure act, chapter 34.04 RCW as enacted or hereafter amended, or on its own initiative, hold hearings to determine if new boundaries for each commission district should be established in order to afford each producer a reasonably equal representation in the commission, and if the commission so finds it shall change the boundaries of said commission districts to carry out the proper reapportionment of producer representation on the commission: *Provided*, That the requirement of this section for reasonable equal representation of each producer on the commission need not require an equality of representation when the commission districts east of the crest of the Cascade mountains are compared to the commission districts west of the crest of the Cascade mountains: *Provided further*, That the area east of the crest of the Cascade mountains shall comprise not less than two commission districts.

The commission may in carrying out this reapportionment directive reduce the number of districts presently provided by prior law, whenever it is in the best interest of the producers and if such change would maintain reasonable apportionment for each historical production or marketing area: *Provided*, That each elected commission member whose district may be consolidated with another district shall be allowed to serve out his term of office.

If the commission fails to carry out its directive as set forth herein for equal representation of each producer on the commission the director of agriculture may upon request by ten producers institute a hearing to determine if there is reasonably equal representation for each producer on the commission. If the director of agriculture finds that such reasonably equal representation is lacking, he then shall realign the district boundaries in a manner which will provide proper representation on the commission for each producer. [1975 1st ex.s. c 136 § 7.]

15.44.030 Member qualifications. Each of the producer members of the commission shall:

(1) Be a citizen and resident of this state and the district which he represents; and

(2) Be and for the five years last preceding his election have been actually engaged in producing dairy products within this state. These qualifications must continue during each member's term of office.

The dealer member shall be actively engaged as a dealer in dairy products or employed in a dealer capacity as an officer or employee at management level in a dairy products organization. [1975 1st ex.s. c 136 § 2; 1965 ex.s. c 44 § 4; 1961 c 11 § 15.44.030. Prior: 1959 c 163 § 4; prior: 1939 c 219 § 3, part; RRS § 6266-3, part.]

15.44.032 Terms—Vacancies. The regular term of office of each producer member of the commission shall be three years. Commission members shall be first nominated and elected in 1966 in the manner set forth in RCW 15.44.033 and shall take office as soon as they are qualified. However, expiration of the term of the respective commission members first elected in 1966 shall be as follows:

- (1) District I and II on July 1, 1967;
- (2) District III and IV on July 1, 1968; and
- (3) District V, VI and VII on July 1, 1969.

The respective terms shall end on July 1st of each third year thereafter. Any vacancies that occur on the commission shall be filled by appointment by the other members of the commission, and such appointee shall hold office for the remainder of the term for which he is appointed to fill, so that commission memberships shall be on a uniform staggered basis.

The term of office of the first dealer appointed by the director shall expire July 1, 1977, and the term of office of the first producer who also acts as a dealer appointed by the director shall expire on July 1, 1978. The term of office of each dealer and each producer who also acts as a dealer shall be three years or until such time as a successor is duly appointed. Any vacancy for a dealer or a producer who also acts as a dealer shall be forthwith filled by the director. The director, in making any appointments set forth herein, may consider lists of nominees supplied him by dealers or producers also acting as dealers. [1975 1st ex.s. c 136 § 3; 1965 ex.s. c 44 § 5; 1961 c 11 § 15.44.032. Prior: 1959 c 163 § 5.]

15.44.033 Nomination and election procedure. Producer members of the commission shall be nominated and elected by producers within the district that such producer members represent in the year in which a commission member's term shall expire. Such producer members receiving the largest number of the votes cast in the respective districts which they represent shall be elected. The election shall be by secret mail ballot and under the supervision of the director.

Nomination for candidates to be elected to the commission shall be conducted by mail by the director. Such nomination forms shall be mailed by the director to each producer in a district where a vacancy is about to occur. Such mailing shall be made on or after April 1st, but not later than April 10th of the year the commission vacancy will occur. The nomination form shall provide for

the name of the producer being nominated and the names of five producers nominating such nominee. The producers nominating such nominee shall affix their signatures to such form and shall further attest that the said nominee meets the qualifications for a producer member to serve on the commission and that he will be willing to serve on the commission if elected.

All nominations as provided for herein shall be returned to the director by April 30th, and the director shall not accept any nomination postmarked later than midnight April 30th, nor place the candidate thereon on the election ballot.

Ballots for electing members to the commission will be mailed by the director to all eligible producers no later than May 15th, in districts where elections are to be held and such ballots to be valid shall be returned postmarked no later than May 31st of the year mailed, to the director in Olympia.

Whenever producers fail to file any nominating petitions, the director shall nominate at least two, but not more than three, qualified producers and place their names on the secret mail election ballot as nominees: *Provided*, That any qualified producer may be elected by a write-in ballot, even though said producer's name was not placed in nomination for such election. [1967 c 240 § 30; 1965 ex.s. c 44 § 6.]

Severability—1967 c 240: See note following RCW 43.23.010.

15.44.035 Producer lists. The commission shall prior to each election, in sufficient time to satisfy the requirements of RCW 15.44.033, furnish the director with a list of all producers within the district for which the election is being held. The commission shall require each dealer and shipper in addition to the information required under RCW 15.44.110 to furnish the commission with a list of names of producers whose milk they handle. Any producer may on his own motion file his name with the commission for the purpose of receiving notice of election. [1965 ex.s. c 44 § 7.]

15.44.037 Reimbursement of election costs. The commission shall reimburse the director for the necessary costs of conducting elections under the provisions of this chapter. [1965 ex.s. c 44 § 8.]

15.44.038 Quorum—Compensation—Travel expenses. A majority of the commission members shall constitute a quorum for the transaction of all business and the performance of all duties of the commission. Each member shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses at the rates allowed by RCW 43.03.050 and 43.03.060. [1984 c 287 § 15; 1975-'76 2nd ex.s. c 34 § 15; 1975 1st ex.s. c 7 § 12; 1961 c 11 § 15.44.038. Prior: 1959 c 163 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.44.040 Copies of records as evidence. Copies of the proceedings, records and acts of the commission, when certified by the secretary, shall be admissible in any court and be prima facie evidence of the truth of the statements therein contained. [1961 c 11 § 15.44.040. Prior: 1959 c 163 § 9; prior: 1939 c 219 § 4, part; RRS § 6266-4, part.]

15.44.050 Manager—Secretary—treasurer—Treasurer's bond. The commission shall elect a manager, who is not a member, and fix his compensation; and shall appoint a secretary—treasurer, who shall sign all vouchers and receipts for all moneys received by the commission. The treasurer shall file with the commission a fidelity bond in the sum of one hundred thousand dollars, executed by a surety company authorized to do business in the state, in favor of the state and the commission, conditioned for the faithful performance of his duties and strict accounting of all funds to the commission. [1979 ex.s. c 238 § 3; 1961 c 11 § 15.44.050. Prior: (i) 1939 c 219 § 5; RRS § 6266-5. (ii) 1939 c 219 § 6; RRS § 6266-6.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.060 Powers and duties. The commission shall have the power and duty to:

(1) Elect a chairman and such other officers as it deems advisable, and adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers, which shall have the effect of law when not inconsistent with existing laws;

(2) Administer and enforce the provisions of this chapter and perform all acts and exercise all powers reasonably necessary to effectuate the purpose hereof;

(3) Employ and discharge advertising counsel, advertising agents, and such attorneys, agents, and employees as it deems necessary, and prescribe their duties and powers and fix their compensation;

(4) Establish offices, incur expenses, enter into contracts, and create such liabilities as are reasonable and proper for the proper administration of this chapter;

(5) Investigate and prosecute violations of this chapter;

(6) Conduct scientific research designed to improve milk production, quality, transportation, processing, and distribution and to develop and discover uses for products of milk and its derivatives;

(7) Make in its name such advertising contracts and other agreements as are necessary to promote the sale of dairy products on either a state, national, or foreign basis;

(8) Keep accurate records of all its dealings, which shall be open to public inspection and audit by the regular agencies of the state; and

(9) Conduct the necessary research to develop more efficient and equitable methods of marketing dairy products, and enter upon, singly or in participation with others, the promotion and development of state, national, or foreign markets. [1979 ex.s. c 238 § 4; 1961 c 11 §

15.44.060. Prior: 1959 c 163 § 13; 1939 c 219 § 8; RRS § 6266-8.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.070 Rules, regulations and orders, publication. Every rule, regulation, or order made by the commission shall be filed with the director and published in two legal newspapers, one east of the Cascade mountains and one west thereof, within ten days after it is promulgated, and shall become effective pursuant to the provisions of RCW 34.04.040. [1975 1st ex.s. c 7 § 39; 1961 c 11 § 15.44.070. Prior: 1939 c 219 § 18; RRS § 6266-18.]

15.44.080 Assessments on milk and cream—Amounts—Increases—Producer referendum. (1) There is hereby levied upon all milk produced in this state an assessment of 0.6% of class I price for 3.5% butter fat milk as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; and

(2) Subject to approval by a producer referendum as provided in this section, the commission shall have the further power and duty to increase the amount of the maximum authorized assessment rate to be levied upon either milk or cream according to the necessities required to effectuate the stated purpose of the commission.

In determining such necessities, the commission shall consider one or more of the following:

(a) The necessities of—

(i) developing better and more efficient methods of marketing milk and related dairy products;

(ii) aiding dairy producers in preventing economic waste in the marketing of their commodities;

(iii) developing and engaging in research for developing better and more efficient production, marketing and utilization of agricultural products;

(iv) establishing orderly marketing of dairy products;

(v) providing for uniform grading and proper preparation of dairy products for market;

(vi) providing methods and means including but not limited to public relations and promotion, for the maintenance of present markets, for development of new or larger markets, both domestic and foreign, for dairy products produced within this state, and for the prevention, modification or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

(vii) restoring and maintaining adequate purchasing power for dairy producers of this state; and

(viii) protecting the interest of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality;

(b) The extent and probable cost of required research and market promotion and advertising;

(c) The extent of public convenience, interest and necessity; and

(d) The probable revenue from the assessment as a consequence of its being revised.

This section shall apply where milk or cream is marketed either in bulk or package. However, this section shall not apply to milk or cream used upon the farm or in the household where produced.

The increase in the maximum authorized assessment rate to be charged producers on milk and cream provided for in this section shall not become effective until approved by fifty-one percent of the producers voting in a referendum conducted by the commission.

The referendum for approval of any increase in the maximum authorized assessment rate provided for in this section shall be by secret mail ballot furnished to all producers paying assessments to the commission. The commission shall furnish ballots to producers at least ten days in advance of the day it has set for concluding the referendum and counting the ballots. Any interested producer may be present at such time the commission counts said ballots. [1985 c 261 § 18; 1973 1st ex.s. c 41 § 1; 1969 c 60 § 1; 1965 ex.s. c 44 § 1; 1961 c 11 § 15.44.080. Prior: 1959 c 163 § 11; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

15.44.085 Assessments on class I or class II milk. There is hereby levied on every hundredweight of class I or class II milk, as defined in RCW 15.44.087, sold by a dealer, including any milk sold by a producer who acts as a dealer, an assessment of:

(1) Five-eighths of one cent per hundredweight. Such assessment shall be in addition to the producer assessment paid by any producer who also acts as a dealer.

(2) Any additional assessment, within the power and duty of the commission to levy, such that the total assessment shall not exceed one cent per hundredweight, as required to effectuate the purpose of this section.

Such assessment may be increased by approval of dealers and producers who also act as dealers, subject to the standards set forth in chapter 15.44 RCW for increasing or decreasing assessments. The funds derived from such assessment shall be used for educational programs in institutions of learning and the sum of such funds derived annually from said dealers and producers who act as dealers shall be matched by assessments derived from producers for the purpose of funding said educational purposes in institutions of learning by an amount not less than the moneys collected from dealers and producers who act as dealers. [1979 ex.s. c 238 § 5; 1975 1st ex.s. c 136 § 5.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.087 Class I and class II milk defined. For the purpose of RCW 15.44.085, class I and class II milk sold means milk from cows produced by a producer as defined in RCW 15.44.010 and utilized as follows:

- (1) Class I milk shall be all skim milk and butterfat:
- (a) Sold in the form of fluid milk product subject to the following limitations and exceptions:
- (i) Any products fortified with added nonfat milk solids shall be class I in an amount equal only to the weight

of an equal volume of like unmodified product of the same butterfat content.

(ii) Fluid milk products in concentrated form shall be class I in an amount equal to the skim milk and butterfat used to produce the quantity of such products sold.

(iii) Products classified as class II pursuant to subsection (2) of this section are excepted.

(b) Packaged fluid milk products in inventory at the end of the month.

(2) Class II milk shall be all skim milk and butterfat:

(a) Used to produce ice cream, ice cream mix, frozen desserts, aerated cream products, plastic cream, soured cream dressing, yogurt, eggnog, cottage cheese, pot cheese, bakers cheese, cream cheese, neufchatel cheese, or starter; or

(b) Any milk or milk product, sterilized and either (i) packaged in hermetically sealed metal, plastic, foil, paper, or glass containers and used to produce condensed milk and condensed skim milk, or (ii) in fluid milk products disposed of in bulk to commercial food processing establishments or producer milk sold to a commercial food processing establishment. [1979 ex.s. c 238 § 6; 1975 1st ex.s. c 136 § 6.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.090 Collection of assessments—Lien. All assessments shall be collected by the first dealer and deducted from the amount due the producer, and all moneys so collected shall be paid to the treasurer of the commission on or before the twentieth day of the succeeding month for the previous month's collections, and deposited by him in banks designated by the commission to the credit of the commission fund. If a dealer or a producer who acts as a dealer fails to remit any assessments, or fails to make deductions for assessments, such sum shall, in addition to penalties provided in this chapter, be a lien on any property owned by him, and shall be reported to the county auditor by the commission, supported by proper and conclusive evidence, and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes. [1979 ex.s. c 238 § 7; 1975 1st ex.s. c 136 § 4; 1961 c 11 § 15.44.090. Prior: 1959 c 163 § 12; prior: 1949 c 185 § 1, part; 1939 c 219 § 9, part; Rem. Supp. 1949 § 6266-9, part.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

15.44.100 Records of dealers, shippers—Preservation—Inspection. Each dealer or shipper shall keep a complete and accurate record of all milk or cream handled by him. The record shall be in such form and contain such information as the commission shall prescribe, and shall be preserved for a period of two years, and be submitted for inspection at any time upon request of the commission or its agent. [1961 c 11 § 15.44.100. Prior: 1959 c 163 § 14; 1939 c 219 § 10; RRS § 6266-10.]

15.44.110 Reports of dealers, shippers, to commission. Each dealer and shipper shall at such times as by rule or regulation required, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of dairy products handled, processed, manufactured, delivered, and shipped, and the quantity of all milk and cream delivered to or purchased by such person from the various producers of dairy products or their agents in the state during the period or periods prescribed by the commission. [1961 c 11 § 15.44.110. Prior: 1959 c 163 § 15; 1939 c 219 § 11; RRS § 6266-11.]

15.44.130 Research, advertising, educational campaign—Increase or decrease of assessments—Procedure. (1) In order to adequately advertise and market Washington dairy products in the domestic, national and foreign markets, and to make such advertising and marketing research and development as extensive as public interest and necessity require, and to put into force and effect the policy of this chapter 15.44 RCW, the commission shall provide for and conduct a comprehensive and extensive research, advertising and educational campaign, and keep such research, advertising and education as continuous as the production, sales, and market conditions reasonably require.

(2) The commission shall investigate and ascertain the needs of dairy products and producers, the conditions of the markets, and the extent to which public convenience and necessity require advertising and research to be conducted.

(3)(a) The commission may decrease or increase the current level of assessment provided for in RCW 15.44.080 following a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.04 RCW: *Provided*, That the current level of assessment established in this manner shall not exceed the maximum authorized assessment rate established by producers in the most recent referendum.

(b) Upon receipt of a petition bearing the names of twenty percent of the producers requesting a reduction in the current level of assessment, the commission shall hold a hearing in accordance with chapter 34.04 RCW to receive producer testimony. After considering the testimony of the producer, the commission may adjust the current level of assessment. [1985 c 261 § 19; 1969 c 60 § 2; 1961 c 11 § 15.44.130. Prior: 1959 c 163 § 17; 1949 c 185 § 2; 1939 c 219 § 13; Rem. Supp. 1949 § 6266-13.]

15.44.135 Promotional printing and literature—Contracts. Promotional printing and literature not restricted by laws relating to public printer, see RCW 15.24.085. Conditions of employment, etc., in contracts, see RCW 15.24.086.

15.44.140 Authority to enter and inspect records. The commission through its agents may inspect the premises and records of any carrier, handler, dealer, manufacturer, processor, or distributor of dairy products

for the purpose of enforcing this chapter. [1961 c 11 § 15.44.140. Prior: 1939 c 219 § 19; RRS § 6266-19.]

15.44.150 Nonliability for commission acts. The state shall not be liable for the acts or on the contracts of the commission, nor shall any member or employee of the commission be liable on its contracts.

All persons employed or contracting under this chapter shall be limited to, and all salaries, expenses and liabilities incurred by the commission shall be payable only from the funds collected hereunder. [1961 c 11 § 15.44.150. Prior: 1939 c 219 § 7; RRS § 6266-7.]

15.44.160 Enforcement of chapter. All state and county law enforcement officers and all employees and agents of the department shall enforce this chapter. [1961 c 11 § 15.44.160. Prior: 1939 c 219 § 16; RRS § 6266-16.]

15.44.170 Penalty. Whoever violates or aids in the violation of the provisions of this chapter shall be guilty of a gross misdemeanor. [1961 c 11 § 15.44.170. Prior: 1939 c 219 § 14; RRS § 6266-14.]

15.44.180 Jurisdiction of courts. The superior courts are hereby vested with jurisdiction to enforce this chapter and to prevent and restrain violations thereof. [1961 c 11 § 15.44.180. Prior: 1939 c 219 § 15; RRS 6266-15.]

15.44.900 Purpose of chapter. This chapter is passed:

(1) In the exercise of the power of the state to protect the public health, to provide for the economic development of the state, to prevent fraudulent practices, to promote the welfare of the state, and stabilize the dairy industry by increasing consumption of dairy products within the state and nation;

(2) Because the dairy products produced in Washington comprise one of the major agricultural crops of Washington, and that therefore the business of marketing and distributing such crop and the expansion of its markets is affected with the public interest;

(3) Because it is necessary and expedient to enhance the reputation of Washington dairy products in domestic and national markets;

(4) Because it is necessary to promote the knowledge of health giving qualities, food and dietetic value of the dairy products of the nation and Washington dairy products in particular, and to expanded development of the dairy industry;

(5) Because Washington dairy products are handicapped by eastbound freight rates, therefore the quality of these products must be impressed upon the consumers of the nation, in order that these handicaps may be overcome;

(6) Because the stabilizing of the dairy industry, the enlargement of its markets, and the increased consumption of dairy products are necessary to assure the payment of taxes to the state and its subdivisions, to alleviate unemployment, and to provide for higher wage

scales for agricultural labor and maintenance of our high standard of living;

(7) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only dairy products of the highest standards of quality, the methods and care used in their preparation for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of marketing and distribution to the extent that the spread between cost to consumer and the amount received by the producer will be reduced to the minimum absolutely necessary;

(8) To establish a permanent organization to assist and promote the supplying of under-nourished and under-privileged children with the necessary milk and milk products to insure the development of healthy bodies and minds in order that they may develop into useful citizens of the state and nation in the future;

(9) To protect the general public by educating it in reference to the various market classifications of dairy products, the food value and industrial and medicinal uses thereof. [1961 c 11 § 15.44.900. Prior: 1939 c 219 § 1; RRS § 6266-1.]

15.44.910 Liberal construction. This chapter shall be liberally construed. [1961 c 11 § 15.44.910. Prior: 1939 c 219 § 17, part; RRS § 6266-17, part.]

Chapter 15.48

SEED BAILMENT CONTRACTS

Sections

15.48.270	Definitions.
15.48.280	Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor.
15.48.290	Payments required to be made by bailor to bailee subject to security interests and agricultural liens.

Agricultural and vegetable seeds: Chapter 15.49 RCW.

Imported seeds, nursery stock, fruit, vegetables, markings on packaging: RCW 17.24.060.

Liens, crop: Chapter 60.11 RCW.

15.48.270 Definitions. As used in this chapter:

(1) "Seed bailment contract" means any bailment contract for the increase of agricultural seeds where the bailor retains title to seed, seed stock, plant life and the seed crop resulting therefrom.

(2) "Bailee" is any tenant farmer or landowner or both, who, for an agreed compensation agrees to plant agricultural seeds furnished by the bailor and to care for, cultivate, harvest and deliver to the bailor the seed resulting therefrom.

(3) "Bailor" is any seed contractor who delivers agricultural seed to a bailee under the terms of a seed bailment contract which requires the bailee to plant, care for, cultivate, harvest and deliver the resultant seed crop to the bailor and requires the bailor to pay the bailee the amount of compensation agreed upon in the contract for

the bailees' services in producing the seed. [1967 c 114 § 14.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor. Seed bailment contracts for the increase of agricultural seeds shall not create a security interest under the terms of the Uniform Commercial Code, chapter 62A.9 RCW. No filing, recording or notice of a seed bailment contract shall be required under any of the laws of the state to establish, during the term of a seed bailment contract the validity of any such contracts, nor to establish and confirm in the bailor the title to all seed, seed stock, plant life and the resulting seed crop thereof grown or produced by the bailee under the terms of a bailment contract. [1967 c 114 § 15.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

15.48.290 Payments required to be made by bailor to bailee subject to security interests and agricultural liens. All payments of money required by the terms of a seed bailment contract to be made by a bailor to a bailee shall be subject to security interests perfected as required by chapter 62A.9 RCW, as amended, and all agricultural liens provided for and perfected in accordance with Title 60 RCW. [1967 c 114 § 16.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Chapter 15.49

WASHINGTON STATE SEED ACT

Sections

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15.49.010 Definitions controlling. For the purpose of this chapter, the definitions set forth in RCW 15.49.020 through 15.49.300 shall be controlling. [1969 c 63 § 1.]

15.49.020 "Department". "Department" means the department of agriculture of the state of Washington or its duly authorized representative. [1969 c 63 § 2.]

15.49.030 "Person". "Person" means a natural person, individual, firm, partnership, corporation, company, society or association. [1969 c 63 § 3.]

15.49.035 Master license system. "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. [1982 c 182 § 23.]

Severability—1982 c 182: See RCW 19.02.901.

15.49.040 "Seeds". "Seeds" mean agricultural or vegetable seeds or other seeds as determined by regulations adopted by the department. [1969 c 63 § 4.]

15.49.050 "Agricultural seeds". "Agricultural seeds" include the seeds of grass, forage, cereal, field, turf, legume and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and mixtures of such seeds, or as determined by regulations adopted by the department. [1969 c 63 § 5.]

15.49.060 "Vegetable seeds". "Vegetable seeds" include the seeds of those crops, including truck crops, which are grown in gardens and on farms for canning and freezing purposes and are generally known and sold under the name of vegetable seeds in this state. [1969 c 63 § 6.]

15.49.070 "Foundation seed", "registered seed", "certified seed". The terms "foundation seed", "registered seed", and "certified seed" mean seed that has been produced and labeled in compliance with the regulations of the department. [1969 c 63 § 7.]

15.49.080 "Pure live seed". "Pure live seed" means a measure of that portion of any lot of seed that consists of live seed and is determined by multiplying the percentage of germination by the percentage of pure seed and dividing by one hundred. [1969 c 63 § 8.]

15.49.090 "Bulk seed". "Bulk seed" means seed distributed in a nonpackage form. [1969 c 63 § 9.]

15.49.100 "Weed seeds". "Weed seeds" include the seeds of all plants generally recognized as weeds within this state, and includes the seeds of prohibited and restricted noxious weeds as determined by regulations adopted by the department. [1969 c 63 § 10.]

15.49.110 "Prohibited (primary) noxious weed seeds". "Prohibited (primary) noxious weed seeds" are the seeds of weeds which when established are highly destructive, competitive and/or difficult to control by cultural or chemical practices. [1969 c 63 § 11.]

15.49.120 "Restricted (secondary) noxious weed seeds". "Restricted (secondary) noxious weed seeds" are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices. [1969 c 63 § 12.]

15.49.130 "Labeling". "Labeling" includes labels, and all other written, printed, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers, and includes representations on invoices. [1969 c 63 § 13.]

15.49.140 "Advertisement". "Advertisement" means all representations, other than on the label, disseminated in any manner, or by any means, relating to seed within the scope of this chapter. [1969 c 63 § 14.]

15.49.150 "Record". "Record" includes all information relating to the handling and distribution of seeds and includes a file sample of each lot of seed distributed. [1969 c 63 § 15.]

15.49.160 "Stop Sale, Use, and/or Removal Order". "Stop Sale, Use, and/or Removal Order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed. [1969 c 63 § 16.]

15.49.170 "Kind". "Kind" means one or more related species or subspecies which singly or collectively is known by one common name: examples are, corn, oats, alfalfa, timothy, etc. [1969 c 63 § 17.]

15.49.180 "Type". "Type" means a group of varieties so nearly similar that the individual varieties cannot be easily differentiated except under special conditions; for example, winter wheat vs. spring wheat. [1969 c 63 § 18.]

15.49.190 "Variety". "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind; for example, merion Kentucky bluegrass vs. park Kentucky bluegrass. [1969 c 63 § 19.]

15.49.200 "Official sample". "Official sample" means any sample of seed taken and designated as official by the department. [1969 c 63 § 20.]

15.49.210 "Lot". "Lot" means a definite quantity of seed identified by a lot number, every portion or bag of which is uniform within recognized tolerances. [1969 c 63 § 21.]

15.49.220 "Lot number". "Lot number" shall identify the producer or dealer and year of production or the year distributed for each lot of seed. This requirement may be satisfied by use of a conditioner's or dealer's code. [1981 c 297 § 6; 1969 c 63 § 22.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.230 "Distribute". "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state. [1969 c 63 § 23.]

15.49.240 "Dealer". "Dealer" means any person who distributes. [1969 c 63 § 24.]

15.49.250 "Certifying agency". "Certifying agency" means (1) an agency authorized under the laws of a state, territory, or possession to officially certify seed and which employs standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified, or (2) an agency of a foreign country that adheres to procedures and standards for seed certification comparable to those established under the provisions of this chapter and the regulations adopted thereunder. [1977 ex.s. c 26 § 2; 1969 c 63 § 25.]

15.49.260 "Retail". "Retail" means to distribute to the ultimate consumer. [1969 c 63 § 26.]

15.49.270 "Seed labeling registrant". "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state. [1969 c 63 § 27.]

15.49.280 "Screenings". "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or conditioning. [1981 c 297 § 7; 1969 c 63 § 28.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.290 "Treated". "Treated" means that the seed has received an application of a pesticide or has been subjected to a conditioning which pesticide or conditioning is designed to reduce, control, or repel certain disease organisms, insects, or other pests attacking such seeds or the seedlings emerging therefrom. Excluded are seeds intended for food or feed use which are treated with pesticides approved for that intended use. [1981 c 297 § 8; 1969 c 63 § 29.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.300 "Inoculant". "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed. [1969 c 63 § 30.]

15.49.310 Department to administer chapter—Rules and regulations—Guidance of federal seed act. The department shall administer, enforce, and carry out the provisions of this chapter and may adopt regulations necessary to carry out its purpose. The adoption of regulations shall be subject to a public hearing and all other applicable provisions of chapter 34.04 RCW (Administrative Procedure Act), as enacted and hereafter amended.

The department when adopting regulations in respect to the seed industry shall consult with affected parties, such as growers, conditioners, and distributors of seed. Any final regulation adopted shall be based upon the requirements and conditions of the industry and shall be for the purpose of promoting the well-being of the purchasers and users of seed as well as the members of the seed industry.

When seed labeling, terms, methods of sampling and analysis, and tolerances are not specifically stated in this chapter or otherwise designated by the department, the department shall, in order to promote uniformity, be guided by officially recognized associations, or regulations under The Federal Seed Act. [1981 c 297 § 9; 1969 c 63 § 31.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.320 Labeling of seed containers required—Contents—Exceptions. (1) Each container of seed distributed in this state for seeding purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label in the English language providing the following information:

- (a) Kind, or kind and variety, or kind and type.
- (b) Lot number.
- (c) Net weight as required under chapter 19.94 RCW as enacted or hereinafter amended.
- (d) Name and address of the seed labeling registrant under whose label said seed is distributed within this state.

(e) When seed is treated, or subjected to a conditioning for which a claim is made, the label shall contain:

(i) A word or statement indicating that the seed has been treated and the conditioning the seed has been subjected to.

(ii) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or a description of the conditioning used.

(iii) The appropriate warning or caution statement for the pesticide used. The skull and cross-bones and the word **POISON** shall be used when the pesticide is highly toxic. This warning shall be conspicuous, and the size of type shall be not less than eight point.

(f) When a claim is made for inoculation the label shall also show the month and year beyond which the inoculant is no longer claimed to be effective.

(g) The name and number of restricted noxious weed seeds per pound.

(2) The label for each container of agricultural seed distributed in the state shall contain the information required in subsection (1) of this section and the following:

(a) For each named crop seed the percentage of germination, exclusive of hard seed;

(b) The percentage of hard seed, if present;

(c) The calendar month and year the test was completed to determine such percentages;

(d) A purity statement which shall include a commonly accepted name of kind, or kind and variety, or kind and type of each crop seed component in excess of five percent of the whole and the percentage by weight of each in the order of its predominance. When more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label;

(e) Percentage by weight of all weed seeds, of inert matter, and of other agricultural seeds (percent other crop) other than those required to be named on the label as components in subsection (2)(d) of this section;

(f) Origin—The state (domestic) or country (foreign) where grown, or if origin unknown, that fact shall be stated. Exceptions may be provided by regulations.

(3) The label for each container of vegetable seed distributed in this state shall contain the kind and variety, the information required in subsection (1) (b) through (g) of this section, and the following:

(a) For packages of more than one pound—

(i) The information in subsection (2) (a), (b), (c), and (d) of this section.

(b) For packages of one pound or less (when seed germination is less than the standards established by the department)—

(i) The information in subsection (2) (a), (b), (c) of this section and the words "below standard."

(4) Specific labeling requirements for kinds of seeds may be adopted in regulations because of individual unique requirements, e.g., bulk grain seed.

(5) The provisions of this section shall not apply:

(a) To seed or grain not intended for seeding purposes, except when labeling, advertising, or other representations indicate that it is suitable for seed by the use

of such terms as conditioned, treated, certified, variety designated or other terms of similar implication.

(b) To seed in a cleaning or conditioning establishment, or being transported or consigned to such establishment for the purpose of cleaning or conditioning: *Provided*, That any labeling or other representation which may be made with respect to the uncleaned or unconditioned seed shall be subject to this chapter.

(c) To seed weighed and packaged, in the presence of the purchaser, from a bulk container which is labeled in accordance with this chapter.

(d) To seed transported from one warehouse to another without transfer of title, when each container is plainly marked or identified with a lot number. Upon request of the department, required label information shall be made available. [1981 c 297 § 10; 1969 c 63 § 32.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.330 Screenings—Removal required—Disposition. (1) All screenings, removed in the cleaning or conditioning of seeds, which contain prohibited or restricted noxious weed seeds shall be removed from the seed conditioning plant only under conditions that will prevent weed seeds from being dispersed into the environment.

(2) The director may by regulation adopt requirements for moving, conditioning, and/or disposing of screenings. [1981 c 297 § 11; 1979 c 154 § 1; 1969 c 63 § 33.]

Severability—1981 c 297: See note following RCW 15.36.110.

Severability—1979 c 154: "If any provision of this 1979 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." [1979 c 154 § 27.]

15.49.340 Violations—Distributing mislabeled seed—Detaching, altering, etc., labels—Hindering or obstructing department—Screenings. It shall be unlawful for any person:

(1) To distribute mislabeled seed. Seed shall be deemed to be mislabeled:

(a) If the germination test, required by RCW 15.49.320 has not been completed within the following time limitations:

(i) Eight months for seeds distributed to a dealer for resale.

(ii) Eighteen months for seeds distributed by a dealer at retail.

(iii) When seeds are packaged under conditions which the department has determined will prolong their viability, the department may designate a longer period than otherwise specified in this section, and may require additional labeling to maintain identification of seed packaged under such conditions.

(b) If it is not labeled in accordance with RCW 15.49.320 or regulations adopted thereunder: *Provided*, That no person shall be subject to the penalties of this chapter for having distributed seed which is incorrectly labeled or misrepresented as to kind, type, variety, or

origin and which seed cannot be identified by examination thereof, if he possesses, at the time of notification of the violation, an invoice or a declaration from a distributor or grower giving kind, type, variety, or origin, and if he has taken such other precautions necessary to insure the identity to be that stated.

(c) If advertising or labeling is false or misleading in any way.

(d) If composition or quality falls below or differs from that which it is purported or represented to be by its labeling.

(e) If it consists of or contains prohibited noxious weed seeds.

(f) If it consists of or contains restricted noxious weed seeds in excess of the number declared on the label: *Provided*, That the maximum number of restricted noxious weed seeds per pound shall not exceed that amount established by regulations.

(g) If the total weed seed content is in excess of two percent.

(h) If it contains less than twenty-five percent pure live seed.

(i) If its labeling represents it to be foundation, registered or certified seed unless it has been inspected and tagged accordingly by a certifying agency meeting certification standards of the department.

(j) If a white, purple, or blue colored tag is attached which is of similar size and format to the official certification tag which could be mistaken for the official certification tag.

(k) If labeled with a variety name but not certified by a certifying agency when it is a variety for which a certificate of plant variety protection under the federal plant variety protection act (84 Stat. 1542, 7 U.S.C. Sec. 2321 et seq.) specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(2) To detach, alter, deface, or destroy any seed label or alter or substitute seed in a manner that may defeat the purpose of this chapter.

(3) To hinder or obstruct the department in the performance of its duties under this chapter.

(4) To engage in the cleaning of seeds, entered by growers for certification, without first having obtained a seed conditioning permit from the department.

(5) To distribute screenings for seeding purposes. [1981 c 297 § 12; 1977 ex.s. c 26 § 3; 1969 c 63 § 34.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.350 Permit to condition certified seed. Upon application for a permit to condition certified seed, the department shall inspect the seed conditioning facilities of the applicant to determine that genetic purity and identity of seed conditioned can be maintained. Upon approval, the department shall issue a seed conditioning permit, for each regular place of business, which shall be conspicuously displayed in the office of such business. The permit shall remain in effect as long as the facilities comply with the department's requirements for such permit. [1981 c 297 § 13; 1969 c 63 § 35.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.360 Records—Maintenance—Availability of records and samples for inspection. The seed labeling registrant whose name appears on the label shall: (1) Keep, for a period of two years after the date of final disposition, complete records of each lot of seed distributed: *Provided*, That the file sample of each lot of seed distributed need be kept for only one year.

(2) Make available, during regular working hours, such records and samples for inspection by the department. [1969 c 63 § 36.]

15.49.370 Department's enforcement authority. The department shall have the authority to:

(1) Sample, inspect, make analysis of, and test seeds distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such seeds are in compliance with the provisions of this chapter. The methods of sampling and analysis shall be those adopted by the department from officially recognized sources. The department, in determining for administrative purposes whether seeds are in violation of this chapter, shall be guided by records, and by the official sample obtained and analyzed as provided for in this section. Analysis of an official sample, by the department, shall be accepted as prima facie evidence by any court of competent jurisdiction.

(2) Enter any dealer's or seed labeling registrant's premises at all reasonable times in order to have access to seeds and to records. This includes the determination of the weight of packages and bulk shipments.

(3) Adopt and enforce regulations for certifying seeds, and shall fix and collect fees for such service. The director of the department may appoint persons as agents for the purpose of assisting in the certification of seeds.

(4) Adopt and enforce regulations for inspecting, grading, and certifying growing crops of seeds; inspect, grade, and issue certificates upon request; and fix and collect fees for such services.

(5) Make purity, germination and other tests of seed on request, and fix and collect charges for the tests made.

(6) Establish and maintain seed testing facilities, employ qualified persons, establish by rule special assessments as needed, and incur such expenses as may be necessary to carry out the provisions of this chapter.

(7) Adopt a list of the prohibited and restricted noxious weed seeds.

(8) Publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production.

(9) Deny, suspend, or revoke licenses, permits and certificates provided for in this chapter subsequent to a hearing, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended, in any case in which the department finds that there has been a failure or refusal to comply with the

provisions of this chapter or regulations adopted hereunder. [1981 c 297 § 14; 1969 c 63 § 37.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.380 Dealer's license to distribute seeds. (1) No person shall distribute seeds without having obtained a dealer's license for each regular place of business: *Provided*, That no license shall be required of a person who distributes seeds only in sealed packages of eight ounces or less, packed by a seed labeling registrant and bearing the name and address of the registrant: *Provided further*, That a license shall not be required of any grower selling seeds of his own production exclusively. Such seed sold by such grower must be properly labeled as provided in this chapter. Each dealer's license shall cost twenty-five dollars, shall be issued through the master license system, shall bear the date of issue, shall expire on the master license expiration date and shall be prominently displayed in each place of business.

(2) Persons custom conditioning and/or custom treating seeds for others for remuneration shall be considered dealers for the purpose of this chapter.

(3) Application for a license to distribute seed shall be through the master license system and shall include the name and address of the person applying for the license, the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds, and any other reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this chapter. [1982 c 182 § 24; 1981 c 297 § 15; 1969 c 63 § 38.]

Severability—1982 c 182: See RCW 19.02.901.

Severability—1981 c 297: See note following RCW 15.36.110.

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: RCW 15.49.035.

to include additional licenses: RCW 19.02.110.

15.49.390 Renewal of dealer's license. If an application for renewal of the dealer's license provided for in RCW 15.49.380, is not filed prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 25; 1969 c 63 § 39.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

15.49.400 Seed labeling permit. (1) No person shall label seed for distribution in this state without having obtained a seed labeling permit. The seed labeling registrant shall be responsible for the label and the seed contents. The application for a seed labeling permit shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty dollars per applicant. The application form shall include the name and address of the applicant, a label or

label facsimile, and any other reasonable and practical information prescribed by the department. Upon approval, the department shall issue said permit to the applicant. All permits expire on January 31st of each year.

(2) If an application for renewal of the seed labeling permit provided for in this section is not filed prior to February 1st of any one year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the license shall be issued: *Provided*, That such additional fee shall not apply if the applicant furnishes an affidavit that he has not labeled seed for distribution in this state subsequent to the expiration of his prior permit. [1969 c 63 § 40.]

15.49.410 "Stop sale, use or removal orders"—Seizure—Condemnation. (1) When the department has determined or has probable cause to suspect that any lot of seed or screenings is mislabeled and/or is being distributed in violation of this chapter or regulations adopted hereunder, it may issue and enforce a written or printed "stop sale, use or removal order" warning the distributor not to dispose of the lot of seed or screenings in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of seed or screenings so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained, the department may bring proceedings for condemnation.

(2) Any lot of seed or screenings not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the locality in which the seed or screenings are located. In the event the court finds the seed or screenings to be in violation of this chapter and orders the condemnation of said seed or screenings, such lot of seed or screenings shall be denatured, conditioned, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state: *Provided*, That in no instance shall the court order such disposition of said seed or screenings without first having given the claimant an opportunity to apply to the court, within twenty days, for the release of said seed or screenings or for permission to condition or relabel it to bring it into compliance with this chapter. [1981 c 297 § 16; 1969 c 63 § 41.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.49.420 Damages precluded. No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.49.410 if the court finds that there was probable cause for such action. [1969 c 63 § 42.]

15.49.430 Penalties. Any person convicted of violating any of the provisions of this chapter, or the regulations adopted hereunder, shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second or subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 c 63 § 43.]

15.49.440 Minor violations—Warning notices. Nothing in this chapter shall be considered as requiring the department to report for prosecution or to stop the sale of seed for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing. [1969 c 63 § 44.]

15.49.450 Prosecution of violators—Prior opportunity for hearing. It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the accused distributor or person to present his view, in writing or orally, to the department. [1969 c 63 § 45.]

15.49.460 Injunctions. The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any regulations promulgated under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1969 c 63 § 46.]

15.49.470 Moneys, disposition—Fees, fines, penalties and forfeitures of district courts, remittance. All moneys collected under the provisions of this chapter shall be paid into the seed fund in the state treasury which is hereby established. Such fund shall be used only in the administration and enforcement of this chapter. All moneys collected under the provisions of chapter 15.49 RCW and remaining in such seed fund account on July 1, 1975, shall likewise be used only in the enforcement of this chapter: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 176; 1975 1st ex.s. c 257 § 2; 1969 ex.s. c 199 § 13; 1969 c 63 § 47.]

Intent—1987 c 202: See note following RCW 2.04.190.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note following.

15.49.480 Cooperation and agreements with other agencies. The department may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1969 c 63 § 48.]

15.49.900 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1969. [1969 c 63 § 49.]

15.49.920 Effective date—1969 c 63. The effective date of this 1969 act is July 1, 1969. [1969 c 63 § 51.]

15.49.930 Continuation of rules adopted pursuant to repealed sections—Adoption, amendment or repeal. The repeal of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900 and the enactment of this 1969 act shall not be deemed to have repealed any regulations adopted under the provisions of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900, and in effect immediately prior to such repeal and not inconsistent with the provisions of this 1969 act. For the purpose of this 1969 act, it shall be deemed that such rules have been adopted under the provisions of this 1969 act pursuant to chapter 34.04 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after the effective date of this 1969 act shall be subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as enacted or hereafter amended, concerning the adoption of rules. [1969 c 63 § 52.]

15.49.940 Short title. RCW 15.49.020 through 15.49.950 shall be known as the "Washington State Seed Act." [1969 c 63 § 53.]

15.49.950 Severability—1969 c 63. If any section or provision of this 1969 act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1969 c 63 § 55.]

Chapter 15.52

WASHINGTON ANIMAL REMEDY ACT

Sections

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15.52.010 Definitions. As used in this chapter:

"Domestic animals" includes all species of animals and fowls under control of man and adapted to his use or pleasure;

"Label" means any written, printed, or graphic matter upon any can, sack, or any other container of livestock remedy;

"Livestock remedies" includes all foods, medicines and other substances sold as preventive, inhibitive, or curative medicines, or for their stimulating, invigorating or other powers, for domestic animals, as such remedies are defined in the United States Pharmacopoeia.

Exclusive of the definitions provided herein, the definitions of livestock remedies shall be as defined in the official publication of the Pharmacopoeia of the United States of America as of June 1, 1949. The director is hereby authorized to amend, revise, or add to said definitions and methods of analysis whenever he shall find the same to be necessary to prevent misbranding, adulteration or other deviation from the standards prescribed by this chapter. [1961 c 11 § 15.52.010. Prior: (i) 1939 c 211 § 5; RRS § 7016-5. (ii) 1939 c 211 § 6; RRS § 7016-6. (iii) 1949 c 167 § 1; 1939 c 211 § 9; Rem. Supp. 1949 § 7016-9. (iv) 1949 c 167 § 2, part; 1939 c 211 § 33, part; Rem. Supp. 1949 § 7016-33, part. (v) 1939 c 211 § 39; RRS § 7016-39. (vi) 1939 c 211 § 42; RRS § 7016-42. (vii) 1939 c 211 § 43; RRS § 7016-43. (viii) 1939 c 211 § 44; RRS § 7016-44.]

15.52.050 Right of entry—Obstructing, unlawful. The director shall have access to any factory or establishment selling or offering for sale or distributing any livestock remedy, to inspect and obtain samples. It shall be unlawful to obstruct or interfere with the director in the performance of any of his duties hereunder. [1961 c 11 § 15.52.050. Prior: (i) 1939 c 211 § 19; RRS § 7016-19. (ii) 1939 c 211 § 20; 1919 c 101 § 8; 1909 c 201 § 9; RRS 7016-20.]

15.52.060 Sample taking for analysis. The director may take samples of livestock remedies for analysis as follows:

(1) Where the product is packed in bulk or sack the sample shall not exceed two pounds, shall be taken from a parcel or number of packages which constitute not less than ten percent of the entire lot being sampled, and shall be taken in the presence of the party in interest or his representative. It shall be thoroughly mixed, divided into two equal parts, and one part given to the party in interest or his representative, and the other to a chemist of the department; or

(2) Where the lot to be sampled is not packed in bulk or sack, the sample shall be one or more containers from each lot or parcel to be sampled. [1961 c 11 § 15.52.060. Prior: 1939 c 211 § 21, part; RRS § 7016-21, part.]

15.52.070 Labeling samples—Findings—Copy to owner. On each such sample shall be placed a label stating the name or brand of material sampled and the time and place of taking the sample. The label shall be signed by the director and party in interest or his representative.

The chemist making the analysis shall return to the director two certified copies of his findings, one of which shall be forwarded to the party in interest.

Such findings shall be admissible in any proceeding involving this chapter as prima facie evidence of the facts therein set forth. [1961 c 11 § 15.52.070. Prior: 1939 c 211 § 21, part; RRS § 7016-21, part.]

15.52.080 Brands—When distinct. Livestock remedies shall be considered as distinct brands when differing either in guaranteed analysis, ingredients, trademark, name, or any other characteristic method of marking. [1961 c 11 § 15.52.080. Prior: 1939 c 211 § 10; RRS § 7016-10.]

15.52.090 Alteration, forgery, unlawful use of brands. No person shall alter, destroy, or remove, or forge, simulate, or falsely represent or use, without authority, any identification device used by the director in carrying out the provisions of this chapter. [1961 c 11 § 15.52.090. Prior: (i) 1939 c 211 § 12; RRS § 7016-12. (ii) 1939 c 211 § 13; RRS § 7016-13.]

15.52.100 Injurious, worthless, seized products—Disposal prohibited. No person shall distribute, sell, display, or offer for sale any livestock remedy which contains injurious ingredients, or which is injurious when used, fed, or applied as directed, or which is known to be of little or no value for the purpose for which it was intended; nor make any false or misleading claims in connection therewith; nor in any manner dispose of any such product seized under RCW 15.52.170. [1961 c 11 § 15.52.100. Prior: (i) 1939 c 211 § 11; 1919 c 101 § 6; RRS § 7016-11. (ii) 1939 c 211 § 14; RRS § 7016-14. (iii) 1949 c 167 § 4; 1939 c 211 § 37; Rem. Supp. 1949 § 7016-37.]

15.52.110 Registration of brands—Fees—Renewal. No person shall sell, offer to sell, or distribute any brand of livestock remedy unless such brand has been registered with the director on a form provided by him, showing the ingredients and the guaranteed analysis, and a registration fee has been paid, in an amount to be fixed by the director not in excess of six dollars for each brand. Each such person shall, on or before the first day of April of each year pay to the director a registration fee in an amount to be fixed by him, not in excess of six dollars, for each brand manufactured or mixed. [1961 c 11 § 15.52.110. Prior: 1943 c 263 § 1, part; 1939 c 211 § 23, part; Rem. Supp. 1943 § 7016-23, part.]

15.52.120 Application for registration—Label contents—Exception. Application for registration of a livestock remedy shall have attached thereto a true copy of the label to be used on the container and a list of the ingredients contained in the product, except that any livestock remedy licensed under the Federal Virus, Serum, and Toxin Act of July 1, 1902, or under the Federal Virus, Serums, Toxins, Antitoxins, and Analogous Products Act of March 4, 1913, shall be exempt from

registration under this chapter. [1961 c 11 § 15.52.120. Prior: (i) 1939 c 211 § 39; RRS § 7016-39. (ii) 1939 c 211 § 40; RRS § 7016-40.]

15.52.130 Investigation period—Sales prohibited during. The director shall have ninety days after the receipt of the application for registration of such products not previously registered, in which to investigate the claims made by the applicant as to the efficacy of the product and to conduct experiments to determine whether the product is harmful or is of the claimed value for the purpose intended. At the end of ninety days, if the director has not notified the applicant that a hearing will be held or has not registered the product, the product shall be registered, and a certificate of registration issued. The applicant shall not sell the product until such certificate of registration has been issued. [1961 c 11 § 15.52.130. Prior: 1939 c 211 § 41; RRS § 7016-41.]

15.52.140 Rules, regulations by director. The director may prescribe and enforce such reasonable rules and regulations and such definitions relating to livestock remedies as he deems necessary to carry into effect the full intent and meaning of this chapter. [1961 c 11 § 15.52.140. Prior: 1939 c 211 § 15, part; 1919 c 101 § 9, part; 1909 c 201 § 10, part; RRS 7016-15, part.]

15.52.150 Refusal to register—Notice and hearing. After due notice to the applicant and a hearing the director may refuse to register the brand of any such product which is detrimental or injurious in effect when applied, fed or used as directed; or which is known to be of little or no value for the purpose intended; or as to which false or misleading claims are made; or which does not comply with the provisions of this chapter or the regulations prescribed by him. [1961 c 11 § 15.52.150. Prior: (i) 1939 c 211 § 15, part; 1919 c 101 § 9, part; 1909 c 201 § 10, part; RRS § 7016-15, part. (ii) 1939 c 211 § 28, part; RRS § 7016-28, part.]

15.52.160 Cancellation of registration—Notice and hearing. After due notice to the registrant and a hearing the director may cancel the registration of the brand of any such product which is detrimental or injurious in effect when applied, fed or used as directed; or which product is known to have little or no value for the purpose intended; or as to which false or misleading claims are made or implied; or when the registrant violates any of the provisions of this chapter. [1961 c 11 § 15.52.160. Prior: 1939 c 211 § 28, part; RRS § 7016-28, part.]

15.52.170 Seizure of prohibited products—Notice—Contents. The director may seize and take into his possession any such product the brand of which has not been registered as herein required, or the sale of which is for any reason prohibited hereunder, and apply to the superior court for an order authorizing him to sell or otherwise dispose of the same, and apply the proceeds to the general fund.

He shall give notice to the person in whose possession the seized product was found, or to the consignee thereof if found in the possession of a common carrier, stating the seizure, the reasons therefor, and a day certain when the application will be brought up for a hearing before the court, which day shall not be less than ten days after service of the notice, unless an earlier date is agreed upon by all parties concerned. [1961 c 11 § 15.52.170. Prior: 1939 c 211 § 22, part; RRS § 7016-22, part.]

15.52.180 Hearing—Evidence. At the hearing such person or consignee may show cause why the application should not be granted. Affidavits and oral testimony may be introduced by any party. Possession of such product shall be prima facie evidence of an intent to keep or ship the product in violation of the provisions of this chapter. [1961 c 11 § 15.52.180. Prior: 1939 c 211 § 22, part; RRS § 7016-22, part.]

15.52.320 Use of funds collected—Earnings. All money collected as fees for brand registrations hereunder shall be deposited in a special account in the state treasury known as the feed and fertilizer account, and used exclusively for the maintenance and enforcement of this chapter, except that not to exceed fifteen percent of said registration fees may, with the consent of the director, be used to purchase equipment and materials to facilitate testing and analyzing required herein. All earnings of investments of balances in the feed and fertilizer account shall be credited to the general fund. [1985 c 57 § 2; 1961 c 11 § 15.52.320. Prior: (i) 1943 c 263 § 1, part; 1939 c 211 § 23, part; Rem. Supp. 1943 § 7016-23, part. (ii) 1939 c 211 § 25, part; RRS § 7016-25, part. (iii) 1939 c 211 § 27; RRS § 7016-27.]

Effective date—1985 c 57: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 57 § 91.]

15.52.330 Penalty. Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and fined for the first offense not to exceed one hundred dollars, and for each subsequent offense not to exceed five hundred dollars. [1961 c 11 § 15.52.330. Prior: 1939 c 211 § 56; RRS § 7016-56.]

15.52.340 Duty of prosecuting attorney. The prosecuting attorneys in their respective counties shall prosecute actions under this chapter on request of the director. [1961 c 11 § 15.52.340. Prior: 1939 c 211 § 57; RRS § 7016-57.]

15.52.900 Short title. This chapter may be cited as the "Washington animal remedy act". [1961 c 11 § 15.52.900. Prior: 1959 c 223 § 1.]

Chapter 15.53 COMMERCIAL FEED

Sections
15.53.901 Definitions.

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15.53.9038	Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure.
15.53.904	Department's remedies for noncompliance—Penalties—Prosecutions—Injunctions.
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15.53.905	Repeal of prior law.
15.53.9052	Continuation of rules adopted under prior law.
15.53.9053	Repealer—Continuation of prior licenses and registrations—1975 1st ex.s. c 257.
15.53.9054	Severability—1965 ex.s. c 31.
15.53.9056	Short title.

15.53.901 Definitions. The definitions set forth in this section apply through [throughout] this chapter.

(1) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(2) "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association.

(3) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial feed, or to offer for sale, sell, barter, or otherwise supply commercial feed in this state.

(4) "Distributor" means any person who distributes.

(5) "Sell" or "sale" includes exchange.

(6) "Commercial feed" means all materials including customer-formula feed which are distributed for use as feed or for mixing in feed, for animals other than man.

(7) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(8) "Customer-formula feed" means a mixture of commercial feed and/or materials each batch of which is mixed according to the specific instructions of the final purchaser or contract feeder.

(9) "Brand" means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state.

(10) "Product" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(11) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

(12) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrappers, or otherwise accompanying such commercial feed.

(13) "Ton" means a net weight of two thousand pounds avoirdupois.

(14) "Percent" or "percentage" means percentage by weight.

(15) "Official sample" means any sample of feed taken by the department, obtained and analyzed as provided in RCW 15.53.9024.

(16) "Contract feeder" means an independent contractor, or any other person who feeds commercial feed to animals pursuant to an oral or written agreement whereby such commercial feed is supplied, furnished or otherwise provided to such person by any distributor and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product: *Provided*, That it shall not include a bona fide employee of a manufacturer or distributor of commercial feed.

(17) "Retail" means to distribute to the ultimate consumer. [1982 c 177 § 1; 1975 1st ex.s. c 257 § 3; 1965 ex.s. c 31 § 2. Prior acts on this subject: 1961 c 11 §§ 15.53.010 through 15.53.900; 1953 c 80 §§ 1-35.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9012 Administration and administrative rules.

The department shall administer, enforce and carry out the provisions of this chapter and may adopt rules necessary to carry out its purpose. The adoption of rules shall be subject to a public hearing and all other applicable provisions of chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended.

The director when adopting rules in respect to the feed industry shall consult with affected parties, such as manufacturers and distributors of commercial feed and any final rule adopted shall be designed to promote orderly marketing and shall be reasonable and necessary and based upon the requirements and condition of the industry and shall be for the purpose of promoting the well-being of the members of the feed industry as well as the well-being of the purchasers and users of feed and for the general welfare of the people of the state. [1965 ex.s. c 31 § 3.]

Continuation of rules adopted under prior law: RCW 15.53.9052.

15.53.9014 Registration of feeds—Exemptions—Application—Renewal—Fees—May be refused.

(1) Each commercial feed shall be registered with the department and such registration shall be renewed annually before such commercial feed may be distributed in this state: *Provided*, That sales of food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants; unmixed seed, whole or processed, made directly from the entire seed; unground hay, straw, stover, silage, cobs, husks, and hulls, when not mixed with other material; bona fide experimental feeds on which accurate records and experimental programs are maintained; and customer-formula feeds are exempt from such registration. The exemption for byproducts provided by this subsection does not apply to byproducts or products of sugar refineries or to materials used in the preparation of pet foods.

(a) Beginning July 1, 1982, each registration for a commercial feed product distributed in packages of ten pounds or more shall be accompanied by a fee of ten dollars. If such commercial feed is also distributed in packages of less than ten pounds it shall be registered under subsection (b) of this section.

(b) Beginning July 1, 1982, each registration for a commercial feed product distributed in packages of less than ten pounds shall be accompanied by an annual registration fee of forty dollars on each such commercial feed so distributed, but no inspection fee may be collected on packages of less than ten pounds of the commercial feed so registered.

(2) The application for registration shall be on forms provided by the department.

(3) The department may require that such application be accompanied by a label and/or other printed matter describing the product. All registrations expire on December 31st of each year, and are renewable unless such registration is canceled by the department or it has called for a new registration, or unless canceled by the registrant.

(4) The application shall include the information required by RCW 15.53.9016(1)(b) through (1)(e).

(5) A distributor shall not be required to register any commercial feed brand or product which is already registered under the provisions of this chapter.

(6) Changes in the guarantee of either chemical or ingredient composition of a commercial feed registered under the provisions of this chapter may be permitted if there is satisfactory evidence that such changes would not result in a lowering of the feed value of the product for the purpose for which designed.

(7) The department is empowered to refuse registration of any application not in compliance with the provisions of this chapter and to cancel any registration subsequently found to be not in compliance with any provisions of this chapter, but a registration shall not be refused or canceled until the registrant has been given opportunity to be heard before the department and to amend his application in order to comply with the requirements of this chapter.

(8) If an application for renewal of the registration provided for in this section is not filed prior to January 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal registration may be issued, unless the applicant furnishes an affidavit that he has not distributed this feed subsequent to the expiration of his prior registration. [1982 c 177 § 2; 1975 1st ex.s. c 257 § 4; 1965 ex.s. c 31 § 4.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9016 Labeling. (1) Any commercial feed registered with the department and distributed in this state shall be accompanied by a legible label bearing the following information:

(a) The net weight as required under chapter 19.94 RCW as enacted or hereinafter amended.

(b) The name or brand under which the commercial feed is distributed.

(c) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added: Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the department. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the department. Products distributed solely as mineral and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat, and fiber.

(d) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.

(e) The name and principal address of the person responsible for distributing the commercial feed.

(2) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk the label shall accompany delivery and be furnished to the purchaser at time of delivery.

(3) A customer–formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

(a) Name and address of the mixer;

(b) Name and address of the purchaser;

(c) Date of sale; and

(d) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(4) If a commercial feed contains a nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or which is intended to affect the structure or any function of the animal body, the department may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

(5) A customer–formula feed shall be considered to be in violation of this chapter if it does not conform to the invoice labeling. Upon request of the department it shall be the duty of the person distributing the customer–formula feed to supply the department with a copy of the invoice which represents that particular feed: *Provided*, That such person shall not be required to keep such invoice for a period of longer than six months. [1965 ex.s. c 31 § 5.]

15.53.9018 Inspection fees—Reports—Confidentiality, exception. (1) On or after June 30, 1981, each initial distributor of a commercial feed in this state shall pay to the department an inspection fee on all commercial feed sold by such person during the year. The fee shall be not less than four cents nor more than fourteen cents per ton as prescribed by the director by rule: *Provided*, That such fees shall be used for routine enforcement of RCW 15.53.9022 and for analysis for contaminants only when the department has reasonable cause to believe any lot of feed or any feed ingredient is adulterated.

(2) In computing the tonnage on which the inspection fee must be paid, sales of: (a) Commercial feed to other feed registrants; (b) commercial feed in packages weighing less than ten pounds; (c) commercial feed for shipment to points outside this state; (d) food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants; (e) unmixed seed, whole or processed, made directly from the entire seed; (f) unground hay, straw, stover, silage, cobs, husks, and hulls, when not mixed with other material; and (g) bona fide experimental feeds on which accurate records and experimental programs are maintained may be excluded. The exemption for byproducts provided by this subsection does not apply to byproducts or products of sugar refineries or to materials used in the preparation of pet foods.

(3) When more than one distributor is involved in the distribution of a commercial feed, the last registrant or initial distributor who distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the reporting and paying of fees have been made by a prior distributor of the feed.

(4) Each person made responsible, by this chapter for the payment of inspection fees for commercial feed sold in this state shall file a report with the department on January 1st and July 1st of each year showing the number of tons of such commercial feed sold during the six calendar months immediately preceding the date the report is due. The proper inspection fee shall be remitted with the report. The person required to file the report and pay the fee shall have a thirty-day period of grace immediately following the day the report and payment are due to file the report, and pay the fee. Upon permission of the department, an annual statement under oath may be filed by any person distributing within the state less than one hundred tons for each six-month period during any year, and upon filing such statement such person shall pay the inspection fee at the rate provided for in subsection (1) of this section.

(5) Each distributor shall keep such reasonable and practical records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department has the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes a violation of this chapter,

and may result in the issuance of an order for "withdrawal from distribution" on any commercial feed being subsequently distributed.

(6) Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a collection fee of ten percent, but not less than ten dollars, added to the amount due when payment is finally made. The assessment of this collection fee shall not prevent the department from taking other actions as provided for in this chapter.

(7) The report required by subsection (4) of this section shall not be a public record, and it is a misdemeanor for any person to divulge any information given in such report which would reveal the business operation of the person making the report: *Provided*, That nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(8) Any commercial feed purchased by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use is subject to all the provisions of this chapter, including inspection fees. [1982 c 177 § 3; 1981 c 297 § 17; 1979 c 91 § 1; 1975 1st ex.s. c 257 § 5; 1967 c 240 § 32; 1965 ex.s. c 31 § 6.]

Effective date—1981 c 297 § 17: "Section 17 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1981." [1981 c 297 § 44.] This applies to the 1981 c 297 amendment to RCW 15.53.9018.

Severability—1981 c 297: See note following RCW 15.36.110.

Effective date—1979 c 91: "This act shall take effect on January 1, 1980." [1979 c 91 § 2.] This applies to the 1979 c 91 amendment to RCW 15.53.9018.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

Severability—1967 c 240: See note following RCW 43.23.010.

15.53.902 Adulteration. It is unlawful for any person to distribute an adulterated feed. A commercial feed is deemed to be adulterated:

(1) 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 commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a food additive); or

(3) If it is, or it bears, or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act; or

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act; or

(5) If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act; or

(6) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(7) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; or

(8) If it contains viable, prohibited (primary) noxious weed seeds in excess of one per pound, or if it contains viable, restricted (secondary) noxious weed seeds in excess of twenty-five per pound. The primary and secondary noxious weed seeds shall be those as named pursuant to the provisions of chapter 15.49 RCW as enacted or hereafter amended and rules adopted thereunder. [1982 c 177 § 4; 1979 c 154 § 2; 1965 ex.s. c 31 § 7.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.53.9022 Misbranding. It shall be unlawful for any person to distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If it is distributed under the name of another feed;

(3) If it is not labeled as required in RCW 15.53.9016 and in regulations prescribed under this chapter;

(4) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In the adopting of such regulations the department may consider commonly accepted definitions such as those issued by nationally recognized associations or groups of feed control officials;

(5) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling)

and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(6) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling. [1965 ex.s. c 31 § 8.]

15.53.9024 Official samples. (1) It shall be the duty of the department to sample, inspect, make analysis of, and test commercial feed distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such feeds are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting feed on the public highways and direct it to the nearest scales approved by the department to check weights of feeds being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises including any vehicle of transport at all reasonable times in order to have access to commercial feed and to records relating to their distribution. This includes the determining of the weight of packages and bulk shipments.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a feed is deficient in any component, shall be guided solely by the official sample as defined in RCW 15.53.901(13) and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made the results of analysis shall be forwarded by the department to the distributor and to the purchaser if known. Upon request and within thirty days the department shall furnish to the distributor a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1965 ex.s. c 31 § 9.]

Prosecutions, official analysis as evidence: RCW 15.53.904.

15.53.9036 Procedure for denial, etc., of registration. All hearings for a denial, suspension, or revocation of any registration provided for in this chapter shall be subject to the provisions of chapter 34.04 RCW (the Administrative Procedure Act) concerning contested cases, as enacted or hereafter amended. [1975 1st ex.s. c 257 § 6; 1965 ex.s. c 31 § 15.]

Construction—**Effective date**—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9038 Department's remedies for noncompliance—"Withdrawal from distribution" order—Condemnation—Seizure. (1) When the department has reasonable cause to believe that any lot of commercial feed is adulterated or misbranded or is being distributed in violation of this chapter or any regulations hereunder it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of feed in any manner

until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of commercial feed so withdrawn when the provisions and regulations have been complied with. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with the provisions and regulations is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial feed is located. If the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. The court shall first give the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter. [1982 c 177 § 5; 1975 1st ex.s. c 257 § 7; 1965 ex.s. c 31 § 16.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.904 Department's remedies for noncompliance—Penalties—Prosecutions—Injunctions. (1) Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department in the performance of its duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than one hundred dollars for the first violation, and not less than two hundred dollars nor more than five hundred dollars for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the department shall be accepted as prima facie evidence of the composition.

(2) Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the distributor to present his view in writing or orally to the department.

(4) The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond. [1965 ex.s. c 31 § 17.]

Analysis of official sample as evidence: RCW 15.53.9024.

15.53.9042 Department to publish distribution information, production data and analyses comparison. The department shall publish at least annually, in such forms as it may deem proper, information concerning the distribution of commercial feed, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feed within the state as compared with the analyses guaranteed in the registration and on the label or as calculated from the invoice data for customer-formula feeds: *Provided*, That the information concerning production and use of commercial feeds shall not disclose the operations of any person. [1965 ex.s. c 31 § 18.]

15.53.9044 Disposition of moneys. All moneys collected under the provisions of this chapter shall be paid into the commercial feed fund in the state treasury which is hereby established. Such fund shall be used only in the administration and enforcement of this chapter. All moneys collected under the provisions of chapter 15.53 RCW and remaining in such commercial feed account in the state general fund on the effective date of this chapter, shall be used in enforcement of this chapter. [1975 1st ex.s. c 257 § 8; 1965 ex.s. c 31 § 19.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.53.9046 Cooperation with other entities. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government and private associations in order to carry out the purpose and provisions of this chapter. [1965 ex.s. c 31 § 24.]

15.53.9048 Chapter is cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1965 ex.s. c 31 § 20.]

15.53.905 Repeal of prior law. Sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and RCW 15.53.010 through 15.53.900 are each repealed. [1965 ex.s. c 31 § 25.]

Prior liability preserved: "The enactment of this act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this act." [1965 ex.s. c 31 § 21.]

Continuation of prior licenses and registrations: "All registrations and licenses in effect under sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961, and RCW 15.53.010 through 15.53.900 on the effective date of this act shall continue in full force and effect until December 31, 1965. No registration that has already been paid under the requirements of any prior act shall be refunded." [1965 ex.s. c 31 § 23.]

Effective date—1965 ex.s. c 31: "The effective date of this act is July 1, 1965." [1965 ex.s. c 31 § 26.]

The foregoing annotations apply to 1965 ex.s. c 31. For codification of that act, see Codification Tables, Volume 0.

15.53.9052 Continuation of rules adopted under prior law. The repeal of sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and chapter 15.53 RCW and the enactment of this act shall not be deemed to have

repealed any rules adopted under the provisions of sections 15.53.010 through 15.53.900, chapter 11, Laws of 1961 and chapter 15.53 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act. [1965 ex.s. c 31 § 22.]

Administration and administrative rules: RCW 15.53.9012.

15.53.9053 Repealer—Continuation of prior licenses and registrations—1975 1st ex.s. c 257. (1) The following acts or parts of acts are each repealed:

(a) Section 10, chapter 31, Laws of 1965 ex. sess., section 33, chapter 240, Laws of 1967 and RCW 15.53.9026; and

(b) Sections 11 through 14, chapter 31, Laws of 1965 ex. sess. and RCW 15.53.9028 through 15.53.9034.

(2) The enactment of *this act and the repeal of the sections listed in subsection (1) of this section shall not have the effect of terminating, or in any way modify any liability, civil or criminal, which shall already be in existence on July 1, 1975.

(3) All licenses and registrations in effect on July 1, 1975 shall continue in full force and effect until their regular expiration date, December 31, 1975. No registration or license that has already been paid under the requirements of prior law shall be refunded. [1975 1st ex.s. c 257 § 12.]

***Reviser's note:** "this act" [1975 1st ex.s. c 257] consists of this section and amendments to RCW 15.13.470, 15.49.470, 15.53.901, 15.53.9014, 15.53.9018, 15.53.9036, 15.53.9038, 15.53.9044, 15.54.350, 15.54.360, 15.54.480.

Effective date—1975 1st ex.s. c 257: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1975." [1975 1st ex.s. c 257 § 13.]

15.53.9054 Severability—1965 ex.s. c 31. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1965 ex.s. c 31 § 27.]

15.53.9056 Short title. This chapter shall be known as the "Washington Commercial Feed Law". [1965 ex.s. c 31 § 1.]

Chapter 15.54

FERTILIZERS, AGRICULTURAL MINERALS AND LIMES

(Washington commercial fertilizer act)

Sections

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15.54.270 Scope of definitions. Terms used in this chapter shall have the meaning given to them in this chapter unless where used the context thereof shall clearly indicate to the contrary. [1987 c 45 § 1; 1967 ex.s. c 22 § 1.]

Construction—1987 c 45: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1987 c 45 § 32.]

Severability—1987 c 45: "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." [1987 c 45 § 33.]

Effective date—1967 ex.s. c 22: See RCW 15.54.930.

15.54.272 "Commercial fertilizer." "Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant

nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It shall not include unmanipulated animal and vegetable manures and other products exempted by the department by rule. [1987 c 45 § 2; 1967 ex.s. c 22 § 2.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.274 "Specialty fertilizer." "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries. [1967 ex.s. c 22 § 3.]

15.54.276 "Bulk fertilizer." "Bulk fertilizer" means commercial fertilizer distributed in a nonpackage form such as, but not limited to, tote bags, tanks, trailers, spreader trucks, and railcars. [1987 c 45 § 3; 1967 ex.s. c 22 § 4.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.278 "Brand." "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers. [1967 ex.s. c 22 § 5.]

15.54.280 "Guaranteed analysis." (1) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	_____percent
Available phosphoric acid (P ₂ O ₅)	_____percent
Soluble potash (K ₂ O)	_____percent

The percentage must be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(2) For unacidulated mineral phosphatic material, basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(3) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as permitted or required by regulation of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(4) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(5) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of

calcium sulfate (CaSO₄ · 2H₂O) shall be given along with the percentage of total sulfur. [1987 c 45 § 4; 1967 ex.s. c 22 § 6.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.281 "Calcium carbonate equivalent." "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate. [1987 c 45 § 6.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.282 "Grade." "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis", unless otherwise allowed by a regulation adopted by the department. [1967 ex.s. c 22 § 7.]

15.54.284 "Total nutrients." "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis. [1967 ex.s. c 22 § 8.]

15.54.286 "Lime." "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium and/or magnesium carbonate, hydroxide, or oxide, singly or combined. [1967 ex.s. c 22 § 9.]

15.54.288 "Ton." "Ton" means the net weight of two thousand pounds avoirdupois. [1967 ex.s. c 22 § 10.]

15.54.290 "Percent", "percentage." "Percent" or "percentage" means the percentage by weight. [1967 ex.s. c 22 § 11.]

15.54.292 "Department." "Department" means the department of agriculture of the state of Washington or its duly authorized representative. [1967 ex.s. c 22 § 12.]

15.54.294 "Person." "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association. [1967 ex.s. c 22 § 13.]

15.54.296 "Customer-formula fertilizer." "Customer-formula fertilizer" means a mixture of commercial fertilizer and/or materials of which each batch is mixed according to the specific instructions of the final purchaser. [1967 ex.s. c 22 § 14.]

15.54.297 "Manipulation." "Manipulation" means processed or treated in any manner, including drying to a moisture content of less than thirty percent. [1987 c 45 § 5.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.298 "Registrant." "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter. [1967 ex.s. c 22 § 15.]

15.54.300 "Official sample." "Official sample" means any sample of commercial fertilizer taken by the department and designated as "official" by the department. [1967 ex.s. c 22 § 16.]

15.54.302 "Distribute." "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, or otherwise supply commercial fertilizer in this state. [1967 ex.s. c 22 § 17.]

15.54.304 "Distributor." "Distributor" means any person who distributes. [1967 ex.s. c 22 § 18.]

15.54.306 "Label." "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer. [1987 c 45 § 7.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.307 "Labeling." "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer. [1987 c 45 § 8.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.320 Brand and grade registration—Application, forms, fee—Expiration—Penalty for nonrenewal. (1) Each brand and grade of commercial fertilizer shall be registered by the person whose name appears upon the label, or the person's agent, before being distributed in this state. Companies planning to mix customer–formula fertilizers shall include the statement "Customer–Formula Grade Mixes" under the column headed GRADES on the brand registration application form. The application for registration shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty–five dollars per brand. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31st of each year. The application shall include the following information:

- (a) The brand name;
- (b) Declaration of guaranteed analyses of formulations to be sold;
- (c) The name and address of the registrant and the manufacturer; and
- (d) Any other information required by the department by rule.

A label or labels which shall comply with RCW 15.54.340 shall accompany said application.

(2) A distributor shall not be required to register any brand of commercial fertilizer which is already registered under this chapter by another person if the label

does not differ in any respect from that previously registered. However, bulk commercial fertilizer shall be registered by each person distributing such commercial fertilizer.

(3) A distributor shall not be required to register each grade of a customer–formula fertilizer: *Provided*, That such grade shall be distributed under a registered brand.

(4) If an application for renewal of the brand registration provided for in this section is not filed prior to January of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal brand registration shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not distributed this brand subsequent to the expiration of his prior registration. [1987 c 45 § 11; 1967 ex.s. c 22 § 20.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.330 Brand and grade registration—Certificate of registration. The department shall examine the registration application form and labels for conformance with the requirements of this chapter. If the application and appropriate labels are in proper form and contain the required information, the particular brand and grade of commercial fertilizer shall be registered by the department and a certificate of registration shall be issued to the applicant. The department may refuse registration, or cancel the registration, of any brand or grade of commercial fertilizer, the distribution of which would be in violation of any provisions of this chapter. [1967 ex.s. c 22 § 21.]

15.54.340 Labeling requirements. (1) Any commercial fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

- (a) The net weight;
- (b) The brand and grade. The grade shall not be required when no primary nutrients are claimed;
- (c) The guaranteed analysis;
- (d) The name and address of the registrant. The name and address of the manufacturer, if different from the registrant, may also be stated; and
- (e) Other information as required by the department by rule.

(2) If distributed in bulk, a written or printed statement of the information required by subsection (1) above shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer–formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer–formula grade mixes shall be kept by the registrant for a period of six months and shall be available to the department upon request: *Provided*, That each such delivery shall be accompanied by either a statement, invoice, a delivery

slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant, or manufacturer, or both; and the name and address of the purchaser. [1987 c 45 § 12; 1967 ex.s. c 22 § 22.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.350 Inspection fees. (1) There shall be paid to the department for all commercial fertilizers distributed in this state to nonregistrants an inspection fee of nine cents per ton of lime and eighteen cents per ton of all other commercial fertilizer distributed during the year beginning July 1st and ending June 30th.

(2) In computing the tonnage on which the inspection fee must be paid, distribution of commercial fertilizers in packages weighing five pounds net or less, and distribution of commercial fertilizers for shipment to points outside this state may be excluded.

(3) When more than one distributor is involved in the distribution of a commercial fertilizer, the last registrant who distributes to a nonregistrant is responsible for paying the inspection fee, unless the payment of fees has been made by a prior distributor of the fertilizer. [1987 c 45 § 13; 1981 c 297 § 18; 1975 1st ex.s. c 257 § 9; 1967 ex.s. c 22 § 23.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Severability—1981 c 297: See note following RCW 15.36.110.

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.54.362 Reports—Inspection fees—Late collection fee—Confidentiality, exception. (1) Every registrant who distributes commercial fertilizer in this state shall file a semiannual report with the department setting forth the number of net tons of each commercial fertilizer so distributed in this state. The reports will cover the following periods: January 1 through June 30 and July 1 through December 31 of each year. The reports shall be due on or before thirty days following the close of the reporting period: *Provided*, That upon permission of the department, an annual statement under oath may be filed by any person distributing within the state less than one hundred tons for each six-month period during any calendar year, and upon filing such statement, such person shall pay the inspection fee required under RCW 15.54.350. The department may accept sales records or other records accurately reflecting the tonnage sold and verifying such reports.

(2) Each person responsible for the payment of inspection fees for commercial fertilizer distributed in this state shall include the inspection fees with the report on the same dates and for the same reporting periods mentioned in subsection (1) of this section.

(3) The department may, upon request, require registrants to furnish information setting forth the net tons of commercial fertilizer distributed to each location in this state.

(4) Inspection fees which are due and have not been remitted to the department by the due date shall have a late-collection fee of ten percent, but not less than five dollars, added to the amount due when payment is finally made. The assessment of this late collection fee shall not prevent the department from taking any other action as provided for in this chapter.

(5) It shall be a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for the collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department. [1987 c 45 § 14.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.370 Official samples—Right of entry. (1) It shall be the duty of the department to inspect, sample, make analysis of, and test commercial fertilizers distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such fertilizers are in compliance with the provisions of this chapter. The department is authorized to stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to commercial fertilizers and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in RCW 15.54.300 and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the results of analysis shall be forwarded by the department to the registrant and to the purchaser, if known. Upon request and within thirty days, the department shall furnish to the registrant a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction. [1987 c 45 § 16; 1967 ex.s. c 22 § 25.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.380 Penalties for deficiencies upon analysis of commercial fertilizers—Appeal—Disposition of penalties. (1) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one plant nutrient or in total nutrients, penalty shall be assessed in favor of the department in accordance with the following provisions:

(a) A penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than two percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed up to and including ten percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than three percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed from ten and one-tenth percent to twenty percent; a penalty of three times the commercial value of the deficiency, if such deficiency in any one plant nutrient is more than four percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed twenty and one-tenth percent and above.

(b) A penalty of three times the commercial value of the total nutrient deficiency shall be assessed when such deficiency is more than two percent under the calculated total nutrient guarantee.

(c) When a commercial fertilizer is subject to penalty under both (a) and (b) above, only the larger penalty shall be assessed.

(2) All penalties assessed under this section on any one commercial fertilizer, represented by the sample analyzed, shall be paid to the department within three months after the date of notice from the department to the registrant. The department shall deposit the amount of the penalty into the fertilizer, agricultural mineral and lime account.

(3) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) above.

(4) The civil penalties payable in subsections (1) and (2) above shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying said civil penalties. [1987 c 45 § 17; 1967 ex.s. c 22 § 26.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.390 Determination and publication of commercial values—Use in assessment of penalty payments. For the purpose of determining the commercial value to be applied under the provisions of RCW 15.54.380, the department shall determine and publish the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this state. The values so determined and published shall be used in determining and assessing penalty payments and shall be established by rule. [1987 c 45 § 18; 1967 ex.s. c 22 § 27.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.400 Restrictions on sale—Minimum percentages. No superphosphate containing less than eighteen percent of available phosphoric acid may be sold or offered for sale in this state. Specialty fertilizers, except manipulated animal and vegetable manures, guaranteeing less than five percent total plant food shall contain on the label specific directions for use, and prior to registration, the department may require proof of the efficacy of the product when used as directed. [1987 c 45 § 19; 1967 ex.s. c 22 § 28.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.412 Misbranding. No person may distribute misbranded commercial fertilizer. A commercial fertilizer shall be deemed to be misbranded:

(1) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) If it is distributed under the name of another fertilizer product;

(3) If its labeling bears any reference to registration under this chapter unless such reference is required by rule under this chapter;

(4) If any word, statement, or other information, required by this chapter or rules adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, design, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(5) If it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by the department by rule. In adopting such rules the department shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. [1987 c 45 § 20.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.414 Adulteration. No person may distribute an adulterated commercial fertilizer. A commercial fertilizer shall be deemed to be adulterated:

(1) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life are not shown upon the label;

(2) If its composition falls below or differs from that which it is purported to possess by its labeling; or

(3) If it contains unwanted viable seed. [1987 c 45 § 21.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.420 Unlawful acts. It shall be unlawful for any person to:

(1) Distribute an adulterated or misbranded commercial fertilizer;

(2) Fail, refuse, or neglect to place upon or attach to each container of distributed commercial fertilizer a label containing all of the information required by this chapter;

(3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this chapter; or

(4) Distribute a brand or grade of commercial fertilizer which has not been registered with the department. [1987 c 45 § 22; 1967 ex.s. c 22 § 30.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.430 Publication of distribution information, analyses results. The department shall publish at least annually and in such form as it may deem proper (1) information concerning the distribution of commercial fertilizers and (2) results of analyses based on official samples as compared with the analyses guaranteed. [1967 ex.s. c 22 § 31.]

15.54.436 Cancellation of registration or refusal to register if fraudulent or deceptive practices used—Opportunity for hearing. The department may cancel the registration of any brand and grade of commercial fertilizer or refuse to register any brand and grade of commercial fertilizer as provided in this chapter, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of any provision of this chapter or any rule adopted thereunder: *Provided*, That no registration may be revoked or refused until the registrant has been given the opportunity to appear for a hearing by the department. [1987 c 45 § 24.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.440 "Stop sale, use, or removal" order, when issued—Release. The department may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer to hold said commercial fertilizer at a designated place when the department has reasonable cause to believe such fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter, until this chapter has been complied with and said commercial fertilizer is released by order in writing of the department. The department shall release the commercial fertilizer so withdrawn when the owner or custodian has complied with the provisions of this chapter. [1987 c 45 § 23; 1967 ex.s. c 22 § 32.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.450 Noncompliance—Seizure—Disposition. Any lot of commercial fertilizer not in compliance with the provisions of this chapter shall be subject to

seizure on complaint of the department to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this chapter and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: *Provided*, That in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this chapter. [1967 ex.s. c 22 § 33.]

15.54.460 Damages from administrative action, stop sales or seizures. No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under RCW 15.54.440 and 15.54.450 if the court finds that there was probable cause for such action. [1967 ex.s. c 22 § 34.]

15.54.470 Penalty—Violation warnings—Duty of prosecuting attorney—Injunctions. (1) Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a brand or grade or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [1967 ex.s. c 22 § 35.]

15.54.474 Penalty—Failure to comply with chapter or rule. Every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. Every person, who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have

violated this chapter and may be subject to the penalty provided for in this section. [1987 c 45 § 10.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.480 Fertilizer, agricultural mineral and lime fund—Disposition of moneys. All moneys collected under the provisions of this chapter shall be paid into the fertilizer, agricultural mineral and lime fund in the state treasury which is hereby established. Such fund shall be used only in the administration and enforcement of this chapter. All moneys collected under the provisions of chapter 15.54 RCW and remaining in such fertilizer, agricultural mineral and lime account in the state general fund on July 1, 1975, shall likewise be used only in the enforcement of this chapter. [1975 1st ex.s. c 257 § 11; 1967 ex.s. c 22 § 36.]

Construction—Effective date—1975 1st ex.s. c 257: See RCW 15.53.9053 and note.

15.54.490 Cooperation with other entities. The director may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this chapter. [1967 ex.s. c 22 § 37.]

15.54.800 Enforcement of chapter—Adoption of rules. (1) The director shall administer and enforce the provisions of this chapter and any rules adopted under this chapter. All authority and requirements provided for in chapters 34.04 and 42.32 RCW apply to this chapter in the adoption of rules.

(2) The director may adopt appropriate rules for carrying out the purpose and provisions of this chapter, including but not limited to rules providing for:

- (a) Definitions of terms;
- (b) Determining standards for labeling and registration of fertilizers and agricultural minerals and limes;
- (c) The collection and examination of fertilizers and agricultural mineral and limes;
- (d) Recordkeeping by registrants;
- (e) Regulation of the use and disposal of fertilizers for the protection of ground water and surface water; and
- (f) The safe handling, transportation, storage, display, and distribution of fertilizers. [1987 c 45 § 9.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.54.910 Prior liability preserved. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this chapter. [1967 ex.s. c 22 § 38.]

15.54.930 Effective date—1967 ex.s. c 22. The effective date of this act is July 1, 1967. [1967 ex.s. c 22 § 40.]

15.54.940 Continuation of rules adopted pursuant to repealed sections. The repeal of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act. [1967 ex.s. c 22 § 41.]

Repeal of prior law by 1967 act: "Sections 15.54.010 through 15.54.250 and section 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and 15.54.900 are each repealed." [1967 ex.s. c 22 § 43.]

15.54.950 Short title. RCW 15.54.270 through 15.54.490 and 15.54.910 through 15.54.940 shall be known as the "Washington Commercial Fertilizer Act". [1967 ex.s. c 22 § 42.]

15.54.960 Severability—1967 ex.s. c 22. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional. [1967 ex.s. c 22 § 44.]

Chapter 15.58

WASHINGTON PESTICIDE CONTROL ACT

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15.58.910	Continuation of rules adopted pursuant to repealed sections.
15.58.920	Existing liabilities not affected.
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15.58.940	Severability—1971 ex.s. c 190.
15.58.941	Severability—1979 c 146.

Emergency measures to prevent, control, or eradicate plant pests or plant diseases: RCW 17.24.200.

15.58.010 Short title. This chapter may be known and cited as the Washington Pesticide Control Act. [1971 ex.s. c 190 § 1.]

15.58.020 Declaration of public interest. The formulation, distribution, storage, transportation, and disposal of any pesticide and the dissemination of accurate scientific information as to the proper use, or nonuse, of any pesticide, is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be a business affected with the public interest. The provisions of this chapter are enacted in the exercise of the police powers of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1971 ex.s. c 190 § 2.]

15.58.030 Definitions. As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed and any other form of plant or animal life or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the director may declare to be a pest; (b) any substance or mixture of substances intended to be

used as a plant regulator, defoliant or desiccant; (c) any substance or mixture of substances intended to be used as a spray adjuvant; and (d) any other substances intended for such use as may be named by the director by regulation.

(2) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests including devices used in conjunction with pesticides such as lindane vaporizers.

(3) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropod, or mollusk pest.

(4) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(5) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director may declare by regulation to be a pest.

(6) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed, including algae and other aquatic weeds.

(7) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(8) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(9) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(10) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(11) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the pesticide with which it is to be used.

(12) "Pest" means, but is not limited to, any insect, other arthropod, fungus, rodent, nematode, mollusk, weed and any form of plant or animal life or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the director may declare by regulation to be a pest.

(13) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(14) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to

insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(15) "Insects" means any of the numerous small invertebrate animals whose bodies, in the adult stage, are more or less obviously segmented with six legs and usually with two pairs of wings, belonging to the class insecta; for example, aphids, beetles, bugs, bees, and flies.

(16) "Fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, and bacteria, except those on or in living man or other animals.

(17) "Weed" means any plant which grows where not wanted.

(18) "Mollusk" means any invertebrate animal characterized by a soft unsegmented body usually partially or wholly enclosed in a calcareous shell, having a foot and mantle; for example, slugs and snails.

(19) "Restricted use pesticide" means any pesticide or device which the director has found and determined subsequent to hearing under the provisions of chapter 17.21 RCW Washington pesticide application act or this chapter as enacted or hereafter amended, to be so injurious to persons, pollinating insects, bees, animals, crops, wildlife, or lands other than the pests it is intended to prevent, destroy, control, or mitigate that additional restrictions are required.

(20) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(21) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) "Highly toxic pesticides" and/or

(b) "EPA restricted use pesticides" or "restricted use pesticides" which by regulation are restricted to distribution by licensed pesticide dealers only and/or

(c) Any other pesticide except spray adjuvants and those pesticides which are labeled and intended for home and garden use only.

(22) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(23) "Pest control consultant" means any individual who offers or supplies technical advice, supervision or aid or makes recommendations to the user of:

(a) "Highly toxic pesticides" and/or

(b) "EPA restricted use pesticides" or "restricted use pesticides" which are restricted by regulation to distribution by licensed pesticide dealers only and/or

(c) Any other pesticides except spray adjuvants and those pesticides which are labeled and intended for home and garden use only.

(24) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic: *Provided*, That in the case of a spray adjuvant the ingredient statement need contain only the names of the principal functioning agents and

the total percentage of the constituents ineffective as spray adjuvants. If more than three functioning agents are present, only the three principal ones need be named.

(25) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(26) "Inert ingredient" means an ingredient which is not an active ingredient.

(27) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Department" means the department of agriculture of the state of Washington.

(30) "Director" means the director of the department or his duly authorized representative.

(31) "Registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

(32) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or the immediate container thereof, and the outside container or wrapper of the retail package.

(33) "Labeling" means all labels and other written, printed or graphic matter:

(a) Upon the pesticide or device or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States department of agriculture; interior; health, education and welfare; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(34) "Highly toxic" means any highly toxic pesticide as determined by the director under RCW 15.58.040.

(35) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act as enacted or hereafter amended.

(36) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(37) "Regulation" means rule or regulation.

(38) "EPA" means the United States environmental protection agency.

(39) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(40) "FIFRA" means the federal insecticide, fungicide and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 135).

(41) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(42) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(43) "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. [1982 c 182 § 26; 1979 c 146 § 1; 1971 ex.s. c 190 § 3.]

Severability—1982 c 182: See RCW 19.02.901.

15.58.040 Director to administer and enforce chapter, adopt regulations—Scope of regulations. (1) The director shall administer and enforce the provisions of this chapter and regulations adopted hereunder. All the authority and requirements provided for in chapter 34.04 RCW (Administrative Procedure Act) and *chapter 42.32 RCW shall apply to this chapter in the adoption of regulations including those requiring due notice and a hearing for the adoption of permanent regulations.

(2) The director is authorized to adopt appropriate regulations for carrying out the purpose and provisions of this chapter, including but not limited to regulations providing for:

(a) Declaring as a pest any form of plant or animal life or virus which is injurious to plants, men, animals (domestic or otherwise), land, articles, or substances;

(b) Determining that certain pesticides are highly toxic to man. The director shall, in making this determination, be guided by the federal definition of highly toxic, as defined in Title 7, code of federal regulations 362.8 as issued or hereafter amended. The director shall publish a list of all pesticides, determined to be highly toxic, by their common or generic name and their trade or brand name if practical. Such list shall be kept current and shall, upon request, be made available to any interested party;

(c) Determining standards for denaturing pesticides by color, taste, odor, or form;

(d) The collection and examination of samples of pesticides or devices;

(e) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(f) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, misuse, or any other hazard to the public. The director shall be guided by federal regulations concerning pesticide containers;

(g) Procedures in making of pesticide recommendations;

(h) Adopting a list of restricted use pesticides for the state or for designated areas within the state if the director determines that such pesticides may require regulations restricting or prohibiting their distribution or use. The director may include in the regulation the time and conditions of distribution or use of such restricted use pesticides and may, if he deems it necessary to carry out the purpose and provisions of this chapter, require that any or all restricted use pesticides shall be purchased, possessed, or used only under permit of the director and under his direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations: *Provided*, That the director may require all persons issued such permits to maintain records as to the use of all the restricted use pesticides;

(i) Label requirements of all pesticides required to be registered under provisions of this chapter; and

(j) Regulating the labeling of devices.

(3) For the purpose of uniformity and to avoid confusion endangering the public health and welfare the director may adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, established by the United States department of agriculture or any other federal agency. [1971 ex.s. c 190 § 4.]

*Reviser's note: RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15. Later enactment, see chapter 42.30 RCW.

15.58.050 Registration of pesticides—Renewal—Exceptions. Every pesticide which is distributed within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered with the director subject to the provisions of this chapter. Such registration shall be renewed annually prior to January 1: *Provided*, That registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of this chapter; if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For Experimental Use Only—Not To Be Sold", together with the manufacturer's name and address; or if a written permit has been obtained from the director to sell the specific pesticide for experimental purposes subject to restrictions and conditions set forth in the permit. [1971 ex.s. c 190 § 5.]

15.58.060 Statement for registration—Contents. (1) The applicant for registration shall file a statement with the department which shall include:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(b) The name of the pesticide;

(c) Other necessary information required for completion of the department's application for registration form;

(d) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions and precautions for use.

(2) The director, when he deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide including the active and inert ingredients.

(3) The director may require a full description of the tests made and the results thereof upon which the claims are based.

(4) The director may prescribe other necessary information by regulation. [1971 ex.s. c 190 § 6.]

15.58.065 Protection of privileged or confidential information—Procedure—Notice—Declaratory judgment. (1) In submitting data required by this chapter, the applicant may:

(a) Mark clearly any portions thereof which in his opinion are trade secrets or commercial or financial information; and

(b) Submit such marked material separately from other material required to be submitted under this chapter.

(2) Notwithstanding any other provision of this chapter or other law, the director shall not make public information which in his judgment should be privileged or confidential because it contains or relates to trade secrets or commercial or financial information except that, when necessary to carry out the provisions of this chapter, information relating to unpublished formulas of products acquired by authorization of this chapter may be revealed to any state or federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the director when necessary under this chapter.

(3) If the director proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (2) of this section, he shall notify the applicant or registrant in writing, by certified mail. The director shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in the superior court of Thurston county for a declaratory judgment as to whether such information is subject to protection under subsection (2) of this section. [1979 c 146 § 4.]

15.58.070 Annual registration fee—Expiration—Continuation if renewal application made. (1) Any person desiring to register a pesticide with the department shall pay to the director an annual registration fee of twenty dollars for each pesticide registered by the department for such person. All pesticide registrations expire on December 31st of each year.

(2) Any registration approved by the director and in effect on the 31st day of December for which a renewal application has been made and the proper fee paid, continues in full force and effect until the director notifies the applicant that the registration has been renewed, or otherwise denied in accord with the provision of RCW 15.58.110. [1983 c 95 § 2; 1971 ex.s. c 190 § 7.]

15.58.080 Additional fee for late registration renewal—Exception. If the renewal of a pesticide registration is not filed before January 1st of each year, an additional fee of ten dollars shall be assessed and added to the original fee. The additional fee shall be paid by the applicant before the registration renewal for that pesticide shall be issued unless the applicant furnishes an affidavit certifying that he did not distribute the unregistered pesticide during the period of nonregistration. The payment of the additional fee is not a bar to any prosecution for doing business without proper registry. [1983 c 95 § 3; 1971 ex.s. c 190 § 8.]

15.58.090 Certain agencies may register without fee—Not subject to RCW 15.58.180. All federal, state, and county agencies shall register without fee all pesticides sold by them and they shall not be subject to the license provisions of RCW 15.58.180. [1971 ex.s. c 190 § 9.]

15.58.100 Criterion for registering. (1) The director shall require the information required under RCW 15.58.060 and shall register the label or labeling for such pesticide if he determines that:

(a) Its composition is such as to warrant the proposed claims for it;

(b) Its labeling and other material required to be submitted comply with the requirements of this chapter;

(c) It will perform its intended function without unreasonable adverse effects on the environment;

(d) When used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment;

(e) In the case of any pesticide subject to section 24(c) of FIFRA, it meets (1) (a), (b), (c), and (d) of this section and the following criteria:

(i) The proposed classification for general use, for restricted use, or for both is in conformity with section 3(d) of FIFRA;

(ii) A special local need exists.

(2) The director shall not make any lack of essentiality a criterion for denying registration of any pesticide. [1979 c 146 § 2; 1971 ex.s. c 190 § 10.]

15.58.110 Refusing or canceling registration—Procedure—Hearings. (1) If it does not appear to the director that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this chapter or regulations adopted thereunder he shall notify the registrant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the provisions of this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the corrections the director shall refuse to register the pesticide. The applicant may request a hearing as provided for in chapter 34.04 RCW.

(2) The director may, when he determines that a pesticide or its labeling does not comply with the provisions

of this chapter or the regulations adopted thereunder, cancel the registration of a pesticide after a hearing in accordance with the provisions of chapter 34.04 RCW. [1971 ex.s. c 190 § 11.]

15.58.120 Suspension of registration when hazard to public health—Procedure. The director may, when he determines that there is or may be an imminent hazard to the public health and welfare, suspend on his own motion, the registration of a pesticide in conformance with the provisions of chapter 34.04 RCW. [1971 ex.s. c 190 § 12.]

15.58.130 "Misbranded" as applicable to pesticides, devices or spray adjuvants. The term "misbranded" shall apply:

(1) To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(2) To any pesticide:

(a) If it is an imitation of or is offered for sale under the name of another pesticide;

(b) If its labeling bears any reference to registration under the provision of this chapter unless such reference be required by regulations under this chapter;

(c) If any word, statement, or other information, required by this chapter or regulations adopted thereunder to appear on the label or labeling, is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If the label does not bear:

(i) The name and address of the manufacturer, registrant or person for whom manufactured;

(ii) Name, brand or trademark under which the pesticide is sold;

(iii) An ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided*, That the director may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(iv) Directions for use and a warning or caution statement which are necessary and which if complied with would be adequate to protect the public and to prevent injury to the public, including living man, useful vertebrate animals, useful vegetation, useful invertebrate animals, wildlife, and land; and

(v) The weight or measure of the content, subject to the provisions of chapter 19.94 RCW (state weights and measures act) as enacted or hereafter amended.

(e) If that pesticide contains any substance or substances in quantities highly toxic to man, determined as provided by RCW 15.58.040, unless the label bears, in addition to any other matter required by this chapter:

(i) The skull and crossbones;

(ii) The word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(f) If the pesticide container does not bear a label or if the label does not contain all the information required by this chapter or the regulations adopted under this chapter.

(3) To a spray adjuvant when the label fails to state the type or function of the principal functioning agents. [1971 ex.s. c 190 § 13.]

15.58.140 "Adulterated" as applicable to pesticides. The term "adulterated" shall apply to any pesticide if its strength or purity deviates from the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted, or if any contaminant is present in an amount which is determined by the director to be a hazard. [1971 ex.s. c 190 § 14.]

15.58.150 Unlawful acts as to pesticides. (1) It is unlawful for any person to distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of this chapter;

(b) Any pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: *Provided*, That at the discretion of the director, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product;

(c) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this chapter and the regulations adopted under this chapter;

(d) Any pesticide including arsenicals, fluorides, fluosilicates, and/or any other white powdered pesticides unless they have been distinctly denatured as to color, taste, odor, or form if so required by regulation;

(e) Any pesticide which is adulterated or misbranded, or any device which is misbranded;

(f) Any pesticide in containers, violating regulations adopted pursuant to RCW 15.58.040(2)(f) or pesticides found in containers which are unsafe due to damage.

(2) It shall be unlawful:

(a) To sell or deliver any restricted use pesticide to any person who is required by law or regulations promulgated under such law to have a permit to use or purchase such restricted use pesticides unless such person or his agent, to whom sale or delivery is made, has a valid permit to use or purchase the kind and quantity of such restricted use pesticide sold or delivered: *Provided*, That, subject to conditions established by the director, such permit may be obtained immediately prior to sale or delivery from any person designated by the director;

(b) For any person to detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this chapter or regulations adopted under this chapter, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this chapter or the regulations adopted thereunder;

(c) For any person to use or cause to be used any pesticide contrary to label directions or to regulations of the director if those regulations differ from or further restrict the label directions: *Provided*, The compliance to the term "contrary to label directions" is enforced by the director consistent with the intent of this chapter;

(d) For any person to use for his own advantage or to reveal, other than to the director or proper officials or employees of the state, or to the courts of the state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of RCW 15.58.060;

(e) For any person to make false, misleading, or erroneous statements or reports concerning any pest during or after a structural pest inspection. [1987 c 45 § 25; 1979 c 146 § 3; 1971 ex.s. c 190 § 15.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

15.58.160 "Stop sale, use or removal" order—Service. When the director has reasonable cause to believe a pesticide or device is being distributed, stored, or transported in violation of any of the provisions of this chapter, or of any of the prescribed regulations under this chapter, he may issue and serve a written "stop sale, use or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the director may attach the order to the pesticide or device. The pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the director, or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction. [1971 ex.s. c 190 § 16.]

15.58.170 "Stop sale, use or removal" order—Adjudication of alleged violation. (1) After service of a "stop sale, use or removal" order is made upon any person, either that person or the director may file an action in a court of competent jurisdiction in the county in

which a violation of this chapter or regulations adopted thereunder is alleged to have occurred for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this chapter or regulations adopted thereunder: *Provided*, That no authority is granted hereunder to affect the sale or use of products on which legally approved pesticides have been legally used.

(2) If the pesticide or device is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court directs, and the proceeds, if such pesticide or device is sold, less cost including legal costs, shall be paid to the state treasury as provided in RCW 15.58.410: *Provided*, That the pesticide or device shall not be sold contrary to the provisions of this chapter or regulations adopted thereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(3) When a decree of condemnation is entered against the pesticide, court costs, fees, and storage and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide. [1971 ex.s. c 190 § 17.]

15.58.180 Pesticide dealer license—Fee—Application, contents—Pesticide dealer manager, unlawful to operate without—Exceptions. (1) It is unlawful for any person to act in the capacity of a pesticide dealer or advertise as or assume to act as a pesticide dealer without first having obtained an annual license from the director. The license shall expire on the master license expiration date. A license is required for each location or outlet located within this state from which pesticides are distributed. A manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his principal out-of-state location or outlet, but such licensed out-of-state pesticide dealer is exempt from the pesticide dealer manager requirements.

(2) Application for a license shall be accompanied by a twenty dollar annual license fee and shall be made through the master license system and shall include the full name of the person applying for the license and the name of the individual within the state designated as the pesticide dealer manager. If the applicant is a partnership, association, corporation, or organized group of persons, 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. The application shall further state the principal business address of the applicant in the state and elsewhere, 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) It is unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has a license of qualification. The department shall be notified forthwith of any change in the pesticide dealer manager designee during the licensing period.

(4) This section does not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through apparatuses used for such pesticide application, or (b) any federal, state, county, or municipal agency that provides pesticides only for its own programs. [1983 c 95 § 4; 1982 c 182 § 27; 1971 ex.s. c 190 § 18.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

expiration date: RCW 19.02.090.

system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: RCW 15.58.030(43).

to include additional licenses: RCW 19.02.110.

15.58.190 Additional fee for late renewal of pesticide dealer license. If an application for renewal of a pesticide dealer license is not filed on or prior to the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 28; 1971 ex.s. c 190 § 19.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

15.58.200 Pesticide dealer manager examination and license of qualification—Fee. The director shall require each pesticide dealer manager to demonstrate to the director his knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination after which the director shall issue a license of qualification. Application for a license shall be accompanied by a license fee of ten dollars. The director shall charge a five dollar examination fee for each examination administered on other than a regularly scheduled examination date. The pesticide dealer manager license shall be valid until revoked or until the director determines relicensing is necessary. [1981 c 297 § 19; 1971 ex.s. c 190 § 20.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.58.210 Pest control consultant license—Fee—Exemptions. No individual may perform services as a pest control consultant without obtaining from the director an annual license, which license shall expire on the final day of February of each year. Application for a license shall be on a form prescribed by the director and

shall be accompanied by a fee of twenty dollars. Licensed pesticide applicators and operators; employees of federal, state, county, or municipal agencies when acting in their official capacities; and pesticide dealer managers and employees working under the direct supervision of the pesticide dealer manager and only at a licensed pesticide dealer's outlet, are exempt from this licensing provision. [1983 c 95 § 5; 1971 ex.s. c 190 § 21.]

15.58.220 Public pest control consultant license—Nonfee—Exemptions. For the purpose of this section public pest control consultant means any individual who is employed by a governmental agency or unit to act as a pest control consultant as defined in RCW 15.58.030(23). No person shall act as a public pest control consultant on or after February 28, 1973 without first obtaining a nonfee license from the director. Public pest control consultant licenses shall expire on the fifth December 31st from the date of issuance: *Provided*, That all public pest control consultant licenses valid on December 31, 1985, shall expire on December 31, 1990. Application for a license shall be on a form prescribed by the director: *Provided*, That federal and state employees whose principal responsibilities are in pesticide research, the jurisdictional health officer or his duly authorized representative, and public operators licensed under RCW 17.21.220 shall be exempt from this licensing provision. [1986 c 203 § 4; 1981 c 297 § 20; 1971 ex.s. c 190 § 22.]

Severability—1986 c 203: See note following RCW 15.04.100.

Severability—1981 c 297: See note following RCW 15.36.110.

15.58.230 Examination and license for consultants—Fee. The director shall require each applicant for a pest control consultant's license or a public pest control consultant's license to demonstrate to the director the applicant's knowledge of pesticide laws and regulations; pesticide hazards; and the safe distribution, use and application, and disposal of pesticides by satisfactorily passing a written examination for the classifications for which he has applied prior to issuing his license. An examination fee of five dollars shall be charged when an examination is requested at other than a regularly scheduled examination date. [1971 ex.s. c 190 § 23.]

15.58.240 Classified licenses—Limitations—Examinations—Fee—Renewal. The director may classify licenses to be issued under the provisions of this chapter. Such classifications may include but not be limited to agricultural crops, ornamentals, or noncrop land herbicides. If the licensee has a classified license he shall be limited to practicing within these classifications. Each such classification shall be subject to separate testing procedures and requirements: *Provided*, That no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section. The director may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination or

other recertification standards as determined by the director when deemed necessary because new knowledge or new classifications are required to carry out the responsibilities of the licensee. [1986 c 203 § 5; 1971 ex.s. c 190 § 24.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.58.250 Records to be kept—Contents—Access. Any person issued a license or permit under the provisions of this chapter may be required by the director to keep accurate records on a form prescribed by him which may contain the following information:

- (1) The delivery, movement or holding of any pesticide or device, including the quantity;
- (2) The date of shipment and receipt;
- (3) The name of consignor and consignee; and
- (4) Any other information, necessary for the enforcement of this chapter, as prescribed by the director.

The director shall have access to such records at any reasonable time to copy or make copies of such records for the purpose of carrying out the provisions of this chapter. [1971 ex.s. c 190 § 25.]

15.58.260 Grounds for imposition of civil penalty and/or denial, suspension or revocation of license, registration or permit. The director is authorized to impose a civil penalty and/or deny, suspend, or revoke any license, registration or permit provided for in this chapter subject to a hearing and in conformance with the provisions of chapter 34.04 RCW (Administrative Procedure Act) in any case in which the director finds there has been a failure or refusal to comply with the provisions of this chapter or rules adopted hereunder. [1985 c 158 § 2; 1971 ex.s. c 190 § 26.]

15.58.270 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents and records in the county in which the person licensed under this chapter resides in any hearing affecting the authority or privilege granted by a license, registration or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1971 ex.s. c 190 § 27.]

15.58.280 Examination of pesticides or devices—Access—Procedure when criminal proceedings contemplated. The sampling and examination of pesticides or devices shall be made under the direction of the director for the purpose of determining whether or not they comply with the requirements of this chapter. The director is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to pesticides or devices. If it appears from such examination that a pesticide or device fails to comply with the provisions of this chapter or regulations adopted thereunder, and the director contemplates instituting criminal proceedings against any person, the director shall cause notice to be given to such person. Any

person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter in the opinion of the director it appears that the provisions of this chapter or regulations adopted thereunder have been violated by such person, the director shall refer a copy of the results of the analysis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred. [1971 ex.s. c 190 § 28.]

15.58.290 Warning notice, when. Nothing in this chapter shall be construed as requiring the director to report for prosecution or for the institution of condemnation proceedings minor violations of this chapter when he believes that the public interest will be best served by a suitable notice of warning in writing. [1971 ex.s. c 190 § 29.]

15.58.300 Persons exempted from certain penalties under RCW 15.58.150. The penalties provided for violations of RCW 15.58.150(1)(a), (b), (c), (d), and (e) shall not apply to:

(1) Any carrier while lawfully engaged in transporting a pesticide within the state, if such carrier, upon request, permits the director to copy all records showing the transaction in and movement of the articles.

(2) Public officials of the state and the federal government engaged in the performance of their official duties.

(3) The manufacturer or shipper of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides. [1971 ex.s. c 190 § 30.]

15.58.310 Pesticides for foreign export not in violation of chapter. No pesticides shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply. [1971 ex.s. c 190 § 31.]

15.58.320 Certain pharmacists exempted from licensing provisions. The license provisions of this chapter shall not apply to any pharmacist who is licensed pursuant to chapter 18.64 RCW and does not distribute any pesticide required to be registered under the provisions of this chapter. [1971 ex.s. c 190 § 32.]

15.58.330 General penalty—Misdemeanor. Any person violating any provisions of this chapter or regulations adopted thereunder is guilty of a misdemeanor. [1971 ex.s. c 190 § 33.]

15.58.335 Civil penalty—Amount. Every person who fails to comply with this chapter or the rules 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 and every such violation shall be a separate and distinct

offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1985 c 158 § 1.]

15.58.340 Injunction against violation. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any regulation made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur. [1971 ex.s. c 190 § 34.]

15.58.350 Persons charged with enforcement barred from interest in pesticides, devices. No person charged with the enforcement of any provision of this chapter shall be directly or indirectly interested in the sale, manufacture or distribution of any pesticide or device. [1971 ex.s. c 190 § 35.]

15.58.360 No recovery of damages when probable cause. No state court shall allow the recovery of damages from administrative action taken or for "stop sale, use or removal" if the court finds that there was probable cause for such action. [1971 ex.s. c 190 § 36.]

15.58.370 Results of analyses to be published. The department shall publish at least annually and in such form as it may deem proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides: *Provided*, That individual distribution information shall not be a public record. [1971 ex.s. c 190 § 37.]

15.58.380 Board to advise director. The pesticide advisory board shall advise the director on any or all problems relating to the formulation, distribution, storage, transportation, disposal, and use of pesticides in the state. [1971 ex.s. c 190 § 38.]

15.58.400 Cooperation and agreements with other agencies. The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1971 ex.s. c 190 § 40.]

15.58.405 Emergency situations—Special local needs—Experimental use permits. For the purpose of exercising the authority granted to the state under the provisions of FIFRA, the director may:

(1) Meet emergency conditions in this state by applying for an exemption from any provision of FIFRA as provided for by section 18 of that act. If such exemption is granted by the administrator of EPA the director may carry out and enforce the requirements and conditions of the exemption;

(2) Comply with the requirements necessary to issue special local needs registration under section 24(c) of FIFRA; and

(3) Comply with the requirements necessary to issue experimental use permits under section 5(f) of FIFRA. [1979 c 146 § 5.]

15.58.410 Moneys to be paid into state treasury. All moneys received by the director under the provisions of this chapter shall be paid into the state treasury. [1971 ex.s. c 190 § 41.]

15.58.900 Effective date—1971 ex.s. c 190. The effective date of this act is July 1, 1971: *Provided*, That the effective date of sections 21, 22 and 23 is March 1, 1973. [1971 ex.s. c 190 § 42.]

15.58.910 Continuation of rules adopted pursuant to repealed sections. The repeal of RCW 15.57.010 through 15.57.930 and the enactment of this chapter shall not be deemed to have repealed any regulations adopted under the provisions of RCW 15.57.010 through 15.57.930 in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. All such regulations shall be considered to have been adopted under the provisions of this chapter. [1971 ex.s. c 190 § 43.]

15.58.920 Existing liabilities not affected. The enactment of this chapter shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this chapter becomes effective. [1971 ex.s. c 190 § 44.]

15.58.930 Continuation of registrations, licenses and permits. Any registration, license, or permit issued under the provisions of chapter 15.57 RCW and in effect on the effective date of this chapter shall continue in full force and effect until its expiration date, as if it had been issued under the provisions of this chapter, unless revoked prior thereto for cause by the director. [1971 ex.s. c 190 § 45.]

15.58.940 Severability—1971 ex.s. c 190. If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 190 § 46.]

15.58.941 Severability—1979 c 146. If any provision of this 1979 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. [1979 c 146 § 7.]

Chapter 15.60 APIARIES

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15.60.005 Definitions. As used in this chapter:

- (1) "Director" means the director of agriculture of the state of Washington;
- (2) "Department" means the department of agriculture of the state of Washington;
- (3) "Apiary" includes bees, hives, and appliances, wherever they are kept, located, or found;
- (4) "Apiarist" means any person who owns bees or is a keeper of bees;
- (5) "Appliances" means any implements or devices used in the manipulating of bees or their brood or hives, which may be used in any apiary or any extracting or packing equipment;
- (6) "Bees" means honey producing insects of the species *apis mellifera* and include the adults, eggs, larvae, pupae, or other immature stages thereof, together with such materials as are deposited into hives by their adults, except honey and beeswax in rendered form;
- (7) "Colony" or "colonies of bees" refers to any hive occupied by bees;
- (8) "Disease" means American foul brood or European foul brood or any other disease or any condition affecting bees or their brood which may cause an epidemic;
- (9) "Hive" means any receptacle or container made or prepared for the use of bees, or box or similar container taken possession of by bees;
- (10) "Location" means any premises upon which an apiary is located;
- (11) "Person" includes any individual, firm, partnership, association, or corporation, but does not include any common carrier when engaged in the business of transporting bees, hives, appliances, bee cages, or other commodities subject to the provisions of this chapter, in the regular course of business;
- (12) "Inspector" means an apiary inspector authorized by the director to inspect apiaries as provided in this chapter. [1977 ex.s. c 362 § 1; 1961 c 11 § 15.60.005. Prior: 1955 c 271 § 1.]

15.60.010 Division of apiculture created—Travel expenses of director. There is hereby created a division of apiculture in the department of agriculture, which shall consist of the director of agriculture and of such apiary inspectors as he may appoint. The director shall receive no additional salary for performance of his duties under this chapter but shall be paid travel expenses incurred in performing such duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 16; 1961 c 11 § 15.60.010. Prior: 1933 ex.s. c 59 § 1; RRS § 3170-1; prior: 1919 c 116 § 1.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.60.015 Inspection—Disease control—Standards of strength—Identification—Abandoned apiaries—Rules, regulations, orders. (1) The director shall have the power on his own motion or by petition of industry to promulgate and enforce such reasonable rules, regulations, and orders as he may deem necessary or proper to prevent the introduction or spreading of diseases affecting bees or appliances in this state, and to promulgate and enforce such reasonable rules, regulations, and orders as he may deem necessary or proper governing the inspection of all bees and appliances within or about to be imported into this state. Such rules may include establishment of (a) standards of strength for colonies of bees used for pollinating services, and (b) a system of identification for bee hives.

(2) The director shall establish rules to define abandoned apiaries and the control thereof.

(3) All rules, regulations, and orders under this section shall be adopted in accordance with chapter 34.04 RCW. [1977 ex.s. c 362 § 2; 1961 c 11 § 15.60.015. Prior: 1955 c 271 § 2.]

15.60.020 Reciprocal agreements—Inspectors, appointment, duties, compensation, travel expenses. The director shall have authority to enter into reciprocal agreements with any and all states for the prevention or spread of diseases affecting bees or appliances. The director shall appoint one or more apiary inspectors as conditions may warrant, who shall, under his direction, have charge of the inspection of apiaries, and bees, the investigation of outbreaks of bee diseases, investigation of bee poisoning by agricultural insecticides and other chemicals, the enforcement of the provisions of this chapter in relation to the eradication and control of bee diseases, or any other such duties as the director may prescribe. Such apiary inspector, or inspectors, shall be paid such reasonable compensation as may be fixed by the director while so employed and travel expenses incurred in the performance of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 17; 1961 c 11 § 15.60.020. Prior: 1955 c 271 § 4; prior: 1949 c 105 § 1, part; 1945 c 113 § 1, part; 1933 ex.s. c 59 § 2, part; 1919 c 116 § 3, part; Rem. Supp. 1949 § 3170-2, part.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.60.025 Apiary board. There is created in the department the apiary board, hereafter in this section referred to as the "board", consisting of six members appointed by the director. The members of the board shall be beekeepers representing the major geographical divisions of the beekeeping industry in the state. Such geographical divisions shall be determined by the director in accordance with the provisions of chapter 34.04 RCW. In making his selection of the membership of the board, the director shall take into consideration the recommendations of the beekeeping industry.

The term of office of the members of the board shall be three years. Appointment of the first members of the board shall be so made that the terms of two members shall expire at the end of one year, two at the end of two years, and two at the end of three years. Thereafter appointments shall be for full three year terms. No person shall serve two successive terms as a member of the board.

The director may appoint a department representative as the secretary of the board.

The board shall be advisory to the director on all matters relating to the beekeeping industry and may make recommendations on all matters affecting the activities of the department in relation to the beekeeping industry.

The board shall meet at the call of the director or at the request of any three members of the board. It shall meet at least once each year.

Each member of the board shall serve without compensation, but shall be reimbursed for travel expenses incurred in attending meetings of the board and any other official duty authorized by the board and approved by the director in accordance with RCW 43.03.050 and 43.03.060: *Provided, however,* That the board shall be compensated only if apiarists are charged a sufficient fee to cover the expenses of the apiary board. [1977 ex.s. c 362 § 8.]

15.60.030 Registration of apiaries—Identification number—Fee—Posting. Each person owning or having bees in his possession shall register with the director the name, address, and phone number of the owner, and identify the bee yard as provided for herein, on or before April 1st each year. A registration fee may be set by the department of agriculture in compliance with chapter 34.04 RCW for the sole purpose of covering the expenses of the apiary board.

The director shall issue to each apiarist owning or operating more than twenty-five colonies in the state who is registered with the department an identification number. Yards shall be identified by displaying the assigned identification number in at least four inch characters on the side and top of some colonies in each yard. The identification shall be in a color that contrasts with the color of the hive. This identification shall be conspicuous to anyone approaching the bee yard: *Provided,* That any identification number assigned to an apiarist prior to September 21, 1977 shall be assigned to such

apiarist as his identification number. Any apiarist owning or operating no more than twenty-five colonies shall, when placing bees on other than his own property, post his name and address in the apiary. [1981 c 296 § 7; 1977 ex.s. c 362 § 3; 1965 c 44 § 1; 1961 c 11 § 15.60-.030. Prior: 1955 c 271 § 5; prior: 1949 c 105 § 1, part; 1945 c 113 § 1, part; 1933 ex.s. c 59 § 2, part; 1919 c 116 § 3, part; Rem. Supp. 1949 § 3170-2, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.040 Inspection—Eradication of disease—Quarantine—Public nuisance. (1) The director shall make or cause to be made whenever he deems it necessary, inspections of all apiaries.

(2) Whenever a disease exists in any apiary, the inspector making the inspection shall plainly mark the hives containing diseased bees. The inspector shall, in writing, notify the owner or person in charge or in possession of such apiary by certified or registered mail, stating in the notice the nature of the disease found in each colony, identifying such colony by reference to the mark placed upon the hive thereof, and ordering eradication of such disease in accordance with subsections (3) and (4) of this section within a specified time. When the owner or person in charge or in possession of any apiary is not known, the notice shall be served by posting in a conspicuous place in the apiary, or by mailing a copy thereof to the owner's registered address.

(3) The owner or person in charge or in possession of any diseased bees must eradicate such disease within the time specified in the notice. If the disease is American foul brood, the time specified in the notice shall not be less than twenty-four hours nor more than one hundred and twenty hours from the time of serving the notice.

(4) The owner or person in charge or in possession of any hive infected with American foul brood shall eradicate such disease by:

(a) Burning the diseased hive including bees, combs, frames, honey, and wax, and burying the ashes by means approved by the director; or

(b) Delivering the hive, comb intact, to a wax salvage plant or authorized fumigation chamber which has been designated by the director as suitable for such purposes which shall disinfect the hive by means approved by the director.

(5) Any apiary which is found to be infected with American foul brood and to be dangerous to the health of any apiary in this state may be summarily quarantined by the department. Notice of the quarantine shall be posted prominently on the apiary, and the owner notified of such quarantine. The quarantine shall not be removed until the department reasonably determines that no further infection exists. During the quarantine period, no bees, honey, appliances, equipment, or other materials may be removed from the apiary without first procuring a permit from the department. However, such bees, honey, appliances, equipment, or other materials may be removed for the purpose of eradicating the disease.

(6) If the inspector finds that American foul brood disease has infected more than two hives of ninety-nine

hives or fewer, or more than two percent of hives of one hundred or more, he may, if he deems it necessary, make a complete inspection of all hives in the apiary and the owner of the apiary shall pay the actual and necessary costs of the complete inspection.

(7) Every apiary in which American foul brood is found shall be declared a public nuisance. Whenever any such nuisance exists and the owner refuses or neglects to abate it within the time specified in the notice issued under subsection (2) of this section, the inspector shall abate said nuisance. The owner shall pay the actual and necessary costs of abatement.

(8) The owner or operator of any colony of bees found to be infected with American foul brood shall upon his request be entitled to a scientific analysis of such colony before it is declared a public nuisance by the director. The results of such analysis shall be conclusive as to whether the colony is diseased. The costs of such scientific analysis shall be paid by the apiarist owning or operating the colonies being analyzed if it is found to be diseased. In case the colony is found not to be diseased, the department shall pay the cost of the scientific analysis. The laboratory performing such scientific analysis shall be approved by the director. [1981 c 296 § 8; 1977 ex.s. c 362 § 4; 1961 c 11 § 15.60.040. Prior: 1959 c 174 § 1; 1955 c 271 § 6; prior: (i) 1949 c 105 § 2; 1933 ex.s. c 59 § 3; Rem. Supp. 1949 § 3170-3. (ii) 1933 ex.s. c 59 § 4; RRS § 3170-4.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.043 Colony strength inspection. An owner of bees or his pollination customer may request the director to make a colony strength inspection of any colony of bees. The director, subject to the availability of qualified personnel, shall make such inspection but shall provide the apiarist with advance notice, when possible, of the inspection date. The director shall charge the person requesting such inspection the costs of such inspection, including per diem and travel expenses of the inspector. A copy of the certificate report shall be sent to the person or persons owning the bees within forty-eight hours of the colony strength inspection.

The colony strength requirement shall be decided on a yearly basis by the director, in cooperation with the apiary board created by RCW 15.60.025. [1981 c 296 § 9; 1977 ex.s. c 362 § 9.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.045 Seizure and destruction of abandoned and disease contaminated colonies, hives, bees or appliances. Any colony, hive, bees, or any appliances found by the director to be both abandoned and contaminated with disease shall be seized and destroyed by the director in a manner which will prevent the spread of disease. [1977 ex.s. c 362 § 10.]

15.60.050 Right of entry to inspect. Inspectors shall have access to all apiaries and places where bees, hives, or other related equipment are kept, and it shall be unlawful to resist, impede, or hinder such officers in the discharge of their duties. [1977 ex.s. c 362 § 5; 1961 c

11 § 15.60.050. Prior: 1933 ex.s. c 59 § 6; RRS § 3170-6.]

15.60.060 Disinfection of person, clothing, appliances. Any person who has inspected an infected apiary or knowingly comes in contact with any diseased bees, shall, before proceeding to another apiary, thoroughly disinfect his person, clothing, tools, and appliances used by him which have come in contact with any infected bees or material. [1961 c 11 § 15.60.060. Prior: 1933 ex.s. c 59 § 7; RRS § 3170-7.]

15.60.080 Diseased bees—Immovable combs—Public nuisance. Every apiary in which diseased bees are found, or in which bees are kept in hives wherein the combs or frames are immovable, or which are so constructed as to impede or hinder inspection, is declared a public nuisance, and such apiaries, bees and equipment shall be held by the person in whose possession they may be and shall not be moved from the place where they may be, except upon the written permission or upon the specific direction of the director. The inspector shall affix a warning tag or notice to such nuisance and give notice of such violation in the manner provided in RCW 15.60.040. If the person so notified refuses or fails within the time specified in such notice to commence and proceed by due diligence to comply therewith, such apiary, bees, appliances and equipment may be seized by the director. The prosecuting attorney of the county in which such nuisance is found, on the complaint of the director, shall maintain in the name of the state a civil action to abate and prevent such nuisance; and upon judgment and order of the court, such nuisance shall be condemned and destroyed in the manner directed by the court, or released upon such conditions as the court in its discretion may impose to insure that the nuisance will be abated. If the owner fails to comply with the order of the court within the time specified therein, the court may order disposal of the apiary, bees, appliances and equipment under such terms and conditions as the court may prescribe.

The cost incurred by the state in abating such nuisance may be assessed against the owner of the apiary and paid into the court for return to the apiary fund of the department. [1983 c 3 § 22; 1961 c 11 § 15.60.080. Prior: 1955 c 271 § 7; 1933 ex.s. c 59 § 11; RRS § 3170-11.]

15.60.100 Importation of bees and appliances. It shall be unlawful for any person, or any railroad or transportation company, or other common carrier, to bring into this state for any purpose any bees or used appliances without first having secured an official certificate, certified by the state bee inspector of the state of origin that such bees and appliances are not infected with disease. Written notice shall be given by the owner to the director within three days after the date of arrival, giving the date of arrival, destination and/or location of bees or used appliances, and a copy of the inspection certificate issued by the state of origin. Each apiary or location shall be marked for identification by placing the

name and address of the person importing the bees, hives, or used appliances in letters at least one inch in height. If evidence of any disease is found such imported bees or appliances shall be subject to the same provisions as local bees or appliances. Each person who brings colonies of bees into this state shall register such colonies, as provided by RCW 15.60.030, within three days.

A resident beekeeper of Washington state who obtains a valid inspection certificate and moves his bees out of state for wintering shall not be required to obtain an inspection certificate from the state from which they are being returned, provided that the bees are returned to the state prior to May 15th each year. [1981 c 296 § 10; 1977 ex.s. c 362 § 7; 1961 c 11 § 15.60.100. Prior: 1955 c 271 § 9; prior: (i) 1941 c 130 § 2; Rem. Supp. 1941 § 3183-2. (ii) 1941 c 130 § 3, part; Rem. Supp. 1941 § 3183-3, part. (iii) 1949 c 105 § 5; 1941 c 130 § 5; 1933 ex.s. c 59 § 7; 1919 c 116 § 11; Rem. Supp. 1949 § 3183-5. (iv) 1949 c 105 § 3; Rem. Supp. 1949 § 3170-10.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.110 Certain importation prohibited. No person shall knowingly import into this state any bees of the subspecies *apis mellifera adonsonii*, or African honey bee, except for research purposes under permit from the director and under conditions as set forth by the director. [1977 ex.s. c 362 § 6; 1961 c 11 § 15.60.110. Prior: 1955 c 271 § 10; prior: 1941 c 130 § 3, part; Rem. Supp. 1941 § 3183-3, part.]

15.60.115 Out of state movement, importation—Inspection costs. When an inspection is requested by any person for the purpose of obtaining a certificate of inspection for out of state movement of bees or appliances, the applicant for such certificate shall pay the cost of such inspection, including per diem and traveling expense of the inspector. Any person importing bees or appliances into this state shall pay the cost of such inspection, including per diem and traveling expense of the inspector. [1961 c 11 § 15.60.115. Prior: 1955 c 271 § 11.]

15.60.120 Queen bee rearing apiaries, inspection—Certificate. Every person rearing queen bees for sale shall have each queen rearing apiary inspected whenever necessary and when conditions are favorable for inspection. If the inspection discloses any contagious or infectious disease in any apiary the owner, lessee, or person in charge of such apiary shall not ship any queen bees therefrom until he receives a certificate in writing from the inspector that such apiary is apparently free from disease. [1981 c 296 § 11; 1961 c 11 § 15.60.120. Prior: 1933 ex.s. c 59 § 8, part; RRS § 3170-8, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.130 Use of honey for candy manufacture—Boiling requirement. No person rearing queen bees for sale shall use honey in making candy for use in mailing

cages unless such honey has been boiled for at least thirty minutes. [1961 c 11 § 15.60.130. Prior: 1933 ex.s. c 59 § 8, part; RRS § 3170-8, part.]

15.60.140 Penalty. Any person who violates any provisions of this chapter shall be guilty of a misdemeanor. Upon a second and subsequent violation and conviction, the same shall constitute a gross misdemeanor. [1981 c 296 § 12; 1961 c 11 § 15.60.140. Prior: (i) 1949 c 105 § 4; 1933 ex.s. c 59 § 12; Rem. Supp. 1949 § 3170-12. (ii) 1941 c 130 § 6; Rem. Supp. 1941 § 3183-6.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.150 Malicious, wilful killing or injuring bees—Penalty. No person shall wilfully or maliciously kill honey bees in an apiary, or, for the purpose of injuring honey bees place any poisonous or sweetened substance in a place where it is accessible to them within this state.

Any person who violates any provision of this section shall be guilty of a misdemeanor. [1981 c 296 § 13; 1961 c 11 § 15.60.150. Prior: 1897 c 12 §§ 1, 2; no RRS.]

Severability—1981 c 296: See note following RCW 15.04.020.

15.60.900 Severability—1977 ex.s. c 362. 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. [1977 ex.s. c 362 § 11.]

Chapter 15.61

LADYBUGS AND OTHER BENEFICIAL INSECTS

Sections

15.61.010	Administrative declaration—Regulation of commercial movement.
15.61.020	Intergovernmental cooperation.
15.61.030	Injunctions.
15.61.040	Nonapplicability to honey bees and insects used for research.
15.61.050	Violations—Penalty.
15.61.900	Severability—1963 c 232.

15.61.010 Administrative declaration—Regulation of commercial movement. The director of agriculture in order to protect the production of native and/or domestic plants or their products in this state, may declare ladybugs or any other insects to be beneficial insects and necessary to maintain a beneficial biological balance over insects which are detrimental to such native and/or domestic plants or their products. Such declaration shall be made only after a hearing as prescribed in the administrative procedure act, chapter 34.04 RCW.

Upon declaring ladybugs or other insects to be beneficial insects the director of agriculture may regulate or prohibit the commercial movement of such beneficial insects from this state. [1963 c 232 § 10.]

15.61.020 Intergovernmental cooperation. The director of agriculture may cooperate and enter into agreements with governmental agencies, other states, and agencies of the federal government to carry out the purposes and provisions of this chapter or rules adopted hereunder. [1963 c 232 § 11.]

15.61.030 Injunctions. The director of agriculture may bring an action to enjoin the violation of any provision of this chapter or rule adopted pursuant to said sections in the county where such violation has occurred, notwithstanding the existence of any other remedies at law. [1963 c 232 § 12.]

15.61.040 Nonapplicability to honey bees and insects used for research. The provisions of this chapter shall not apply to honey bees or to those beneficial insects used for research purposes. [1963 c 232 § 13.]

15.61.050 Violations—Penalty. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1963 c 232 § 14.]

15.61.900 Severability—1963 c 232. 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. [1963 c 232 § 15.]

Chapter 15.63

WASHINGTON STATE WHEAT COMMISSION

Sections

15.63.010	Declaration of policy and police power.
15.63.020	Definitions.
15.63.030	Purposes enumerated.
15.63.040	Creation of wheat commission—Composition—Qualifications.
15.63.050	Districts created—Producer members to be elected from each district.
15.63.060	Terms of members.
15.63.070	Nomination and election procedure.
15.63.080	Effective date of chapter—Nomination and election procedure, terms of office postponed and modified if prior law held invalid.
15.63.090	Vacancies.
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15.63.900	Severability—1961 c 87.
15.63.910	Operative, termination date of chapter—Effect of other laws.
15.63.920	Conditional emergency clause.

15.63.010 Declaration of policy and police power. It is in the public interest of all the people to protect the reputation and welfare of the wheat industry of this state. Without a commission to represent it, the wheat industry cannot effectively help itself in developing foreign and domestic markets, in promoting research to better the quality of Washington wheat, or in protecting the consumer by maintaining proper grades and standards. A wheat commission is vitally necessary to improve the competitive position of Washington wheat producers with respect to states already having such commissions, and to assist these producers in obtaining a fair return from their labor, their farms and the wheat they produce. Such a commission must be endowed with such authority as will enable it to cope swiftly and effectively with our rapidly changing economic conditions as they may affect the wheat industry. Therefore this act of the legislature is passed to establish a wheat commission, composed of wheat producers familiar with the complex problems peculiar to the industry, and designed to carry out the purposes of the act as herein set forth, under the supervision of the director of agriculture. The provisions of this act are enacted in the exercise of the police powers of this state for the broad purpose of protecting the health and economic welfare not only of the wheat industry, but of labor and industry dependent upon wheat, and of the people of the state as a whole. [1961 c 87 § 1.]

15.63.020 Definitions. As used in this chapter, the following terms shall have the following meanings:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representatives.

(2) "Person" means any individual, firm, corporation, trust, association, partnership, society or any other organization of individuals.

(3) "Producer" means any person engaged in the business of producing wheat, or having an interest in the production of wheat for market in commercial quantities.

(4) "Commercial quantities" means five hundred or more bushels of wheat produced for market in any calendar year by any producer.

(5) "Wheat" means all kinds and varieties of wheat grown in the state of Washington.

(6) "Wheat commission" and "commission" are synonymous and mean the commission established pursuant to the provisions of this chapter.

(7) "Fiscal year" means the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive.

(8) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing wheat which he has purchased or acquired

from a producer, or which he is shipping for or on behalf of a producer, and shall include any lending agency for a commodity credit corporation loan to producers.

(9) "Commercial channels" means the sale of wheat for use as food, feed, seed or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat, or products produced from wheat. [1961 c 87 § 2.]

15.63.030 Purposes enumerated. The purposes of this chapter are:

(1) To enable wheat producers of Washington with the aid of the state to help themselves in developing foreign and domestic markets.

(2) To provide methods and means for the development of new and larger markets for wheat grown within Washington.

(3) To carry on educational and promotional programs to help develop markets for Washington wheat.

(4) To provide methods and means for participation in whatever federal or other programs have been or may be established to make available gifts or grants for the promotion of marketing of Washington wheat in foreign countries.

(5) To promote and assist in carrying into effect production research into such matters as the development of superior varieties of wheat; methods by which yield in wheat may be increased; disease and the development of disease-resistant varieties of wheat; and more efficient means of processing, handling and marketing of wheat.

(6) To investigate and make recommendations against trade practices detrimental to the wheat industry.

(7) To promote the maintenance of uniform grades and standards suitable to marketing needs and adequate to protect the consumer. [1961 c 87 § 3.]

15.63.040 Creation of wheat commission—Composition—Qualifications. There is hereby created the Washington state wheat commission. The commission shall be composed of five members who shall be producers elected as provided in RCW 15.63.060 and two members who shall be appointed by the producer members so elected. The director shall be an ex officio member of the commission without vote.

The members of the commission shall be citizens and residents of the state and over the age of twenty-five years. The elective producer members shall be producers of wheat in the district in and for which they are nominated and elected. The qualifications of members of the commission must continue during their term of office. [1961 c 87 § 4.]

15.63.050 Districts created—Producer members to be elected from each district. For the purposes of this chapter, the state of Washington is divided into five districts as follows:

(1) District 1: The counties of Ferry, Lincoln, Pend Oreille, Spokane, and Stevens;

(2) District 2: The county of Whitman;

(3) District 3: The counties of Asotin, Columbia, Garfield, and Walla Walla;

(4) District 4: The counties of Adams, Chelan, Douglas, Grant, and Okanogan;

(5) District 5: All other counties of the state of Washington, including the counties of Western Washington and the counties of Benton, Franklin, Kittitas, Klickitat, and Yakima in Eastern Washington.

From each district a producer member shall be elected to the commission. [1961 c 87 § 5.]

15.63.060 Terms of members. The term of office for each member shall be three years from the date of election and until his successor is elected and qualified, except, however, that the first terms of the initial elective producer members of the commission whose terms begin on December 31, 1961 shall be as follows: Terms of members from districts 1 and 2 shall terminate December 31, 1962; terms of members from districts 3 and 4 shall terminate December 31, 1963; and terms of members from district 5 shall terminate December 31, 1964.

The two appointed members of the commission shall be elected to terms of three years by a majority vote of the elected producer members at the first commission meeting, except, however, that the term of the member first appointed during the meeting shall terminate December 31, 1963, and the term of the remaining appointed member shall terminate December 31, 1964. Thereafter such positions shall be filled by majority vote of the elected producer members at the last meeting held prior to termination of term of office. [1961 c 87 § 6.]

15.63.070 Nomination and election procedure. Nominations to fill vacancies in the commission shall be made by written petition signed by not less than five wheat producers residing in the district wherein the vacancy will occur. Nominating petitions shall be sent by the director upon request to any wheat producer residing in such district. Such petitions shall be sent not earlier than September 17 and not later than October 2. Nominating petitions must be filed with the director not earlier than October 8 and not later than October 13.

Members of the commission shall be elected by secret mail ballot under supervision of the director. Ballots shall be mailed not earlier than October 18 and not later than November 2 to all wheat producers listed in the district where a vacancy will occur. They shall be returned to the director postmarked not later than November 16.

In establishing a list of producers, the director shall use the most current and complete list on file in the state department of agriculture. For any areas of the state for which such a list is not complete or current, the director may establish a supplementary list in the following manner: He shall publish a notice to wheat producers in the area involved, requiring them to file with the director a certified report showing the producer's name, mailing address, and the yearly average quantity of wheat produced by him in the five years preceding the date of the notice or in such lesser time as the producer

has produced wheat. The notice shall be published once a week for four consecutive weeks in one or more newspapers of general circulation within the district. All reports shall be filed with the director within twenty days from the last date of publication of the notice, or within thirty days after the mailing of the notice to affected producers, whichever is the later. The director shall keep his list of producers at all times as current and complete as possible and may require information from affected producers at various times in accordance with rules and regulations prescribed by him.

Members of the commission shall be elected by a majority of votes cast by the wheat producers residing in the district, each producer being entitled to one vote. If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

The nomination and election of the initial members of the commission whose terms of office commence on December 31, 1961 shall be in accordance with the procedure set forth in this section.

The director shall provide reasonable public notice of the impending vacancy in each district in which a vacancy may occur, such notice to consist at a minimum of publication once a week for four consecutive weeks in one or more newspapers of general circulation within the district, and shall call for nominations in such notice: *Provided*, That nonreceipt of the notice by any interested person shall not invalidate the election. [1961 c 87 § 7.]

15.63.080 Effective date of chapter—Nomination and election procedure, terms of office postponed and modified if prior law held invalid. In the event that by reason of the contingency specified in RCW 15.63.910, this chapter shall take effect between August 17, 1961 and February 28, 1962, the nomination and election procedures for the first election of the commission shall be postponed so that the assessment authorized by this chapter may be made on the 1962 wheat crop. Should this occur nominating petitions shall be sent by the director not earlier than the 17th day of the month following the month in which the chapter takes effect. From that time, nomination and election procedures shall continue on a time schedule parallel to that specified in RCW 15.63.060 and 15.63.070. Terms of office of commission members shall begin on the last day of the month bearing the same relation to the month in which the earliest nominating petitions are filed as December does to September. Terms of office of commission members elected under the emergency procedure set forth in this section shall terminate as set forth in RCW 15.63.060, without change as a result of the adoption of such procedure. [1961 c 87 § 8.]

Reviser's note: As to the effective date of this chapter [1961 c 87], see RCW 15.63.910 and 15.63.920.

15.63.090 Vacancies. (1) In the event that an elective position becomes vacant because of failure to qualify, resignation, disqualification, removal, death, or for

any other reason, such position shall be filled by majority vote of the remaining members of the commission until an election can be held in the manner provided for in RCW 15.63.070. At such election a commissioner shall be elected to fill the balance of the unexpired term.

(2) In the event that a nonelective position becomes vacant for reasons other than expiration of the term of office, the position shall be filled for the balance of the unexpired term by majority vote of the remaining members of the commission at the first meeting following the occurrence of the vacancy. [1961 c 87 § 9.]

15.63.100 Removal of members—Notice and hearing. A member of the commission may be removed by the director for malfeasance, misfeasance or neglect of duty, after being given a copy of written charges and an opportunity to be heard publicly. In addition to other causes, failure to retain the qualifications for holding of office is sufficient cause for removal. [1961 c 87 § 10.]

15.63.110 Per diem and travel expenses. Members of the commission shall receive the sum of twenty dollars for each day actually spent in attendance at or in traveling to and from meetings of the commission, or on special assignment for the commission, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 18; 1961 c 87 § 11.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.63.120 Meetings—Notice—Quorum—Procedure—Office—Records open to inspection. (1) The commission shall meet as soon as practicable for the purpose of organizing. Thereafter the commission shall meet at least once every three months regularly at such time and place as shall be fixed by resolution of the commission.

(2) The commission shall hold an annual meeting for the presentation of an annual report and proposed budget. Notice of time and place of the annual meeting shall be given by the commission at least ten days prior thereto through notification sent to the regular wire services, newspapers, and radio, and television stations.

(3) The commission shall establish by resolution, the time, place and manner of calling special meetings. Reasonable notice of such meetings shall be given to each commission member and to the public.

(4) Five members shall constitute a quorum. Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(5) The procedure followed by the commission shall be governed in all applicable respects by the provisions of chapter 34.04 RCW, the administrative procedure act, as in force on the effective date of this chapter, or as thereafter amended.

(6) The commission shall, by resolution, establish and maintain an office where books, records, and minutes shall be kept.

(7) All meetings of the commission shall be open to the public. All of its records, books and minutes shall be available for public inspection. [1961 c 87 § 12.]

Reviser's note: As to the effective date of this chapter [1961 c 87], see RCW 15.63.080, 15.63.910 and 15.63.920.

15.63.130 Director's right to approve or disapprove orders, rules, or directives—Review. The director shall attend each meeting of the commission, and shall retain the right to approve or disapprove every order, rule or directive issued by the commission or any action taken by it, such approval or disapproval to be based on whether or not he believes the order, rule, or directive in question to have been issued in conformity with the purposes of this chapter and the powers granted to effectuate them. The decision of the director shall be final, subject to the judicial review authorized by RCW 15.63.240. [1961 c 87 § 13.]

15.63.140 Powers and duties in general. (1) Consistently with the general purposes of this chapter, it shall be the duty of the commission to establish the policies to be followed in the effectuation of its provisions.

(2) In the administration of this chapter the commission shall have the following particular duties and powers:

(a) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties;

(b) To administer, enforce, direct and control the provisions of this chapter;

(c) To establish plans and conduct programs for education, advertising and sales promotion for the purposes of maintaining present markets, to create new or larger markets for wheat grown in the state of Washington, and to promote improved public understanding of the problems confronting the wheat industry;

(d) To provide for carrying on research studies to find more efficient methods of production, processing, handling and marketing of wheat;

(e) To make studies and recommendations for the improvement of standards and grades of wheat;

(f) To investigate, report and recommend the correction of policies and practices detrimental to the Washington wheat industry;

(g) To collect the assessments of producers as provided for in this chapter and to expend the same in accordance with the purposes and provisions thereof;

(h) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(i) To accept and receive gifts and grants and expend the same;

(j) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms as it may deem appropriate to assist it in carrying out the purposes of this chapter: *Provided*, That any attorney selected must be approved by the attorney general;

(k) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(l) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organization or agencies for the purposes specified in this chapter;

(m) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission, whether domestic or foreign, whenever such action is not prohibited by law, for the purpose of promoting the general welfare of the wheat industry, and particularly for the purpose of assisting in the sale and distribution of wheat in domestic or foreign commerce; and to expend its funds, or such portion thereof as it may deem advisable for such purpose, and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of wheat in foreign countries;

(n) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter;

(o) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by agencies of the state;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To establish an interest bearing reserve fund in any bank selected by the commission which is an approved state depository, if, in the opinion of the commission, the establishment of such a fund will further the purposes of this chapter;

(s) To exercise all express and implied rights, powers and authority that may be necessary to perform and carry out the expressed purposes of this chapter, and all of the purposes reasonably implied incidentally thereto, and lawfully connected therewith. [1961 c 87 § 14.]

15.63.150 Assessments—Imposed—Collection—Lien. It is hereby assessed and levied and the commission shall collect an assessment at the rate of one-fourth cent per bushel upon the sale or disposition of all wheat grown in this state and sold through commercial channels, such assessment to be used for the benefit of the wheat industry as provided in this chapter. The assessment shall begin with and include wheat harvested in the crop of the fiscal year 1962, and shall include each and every crop thereafter. It shall be levied and assessed to the producer at the time of sale, and shall be deducted by the first purchaser from the price paid to the producer at the time of sale, or, in the case of a pledge or mortgage of wheat as a security for a loan under any federal price support program or otherwise, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan, at the

time the loan is made by the agency or person making the loan. The assessment shall be deducted as provided in this section whether the wheat is stored in this or any other state. No assessment shall be levied or collected on wheat grown and used by the producer for feed, seed or personal consumption. The assessment constitutes a lien prior to all other liens and encumbrances upon such wheat. [1961 c 87 § 15.]

15.63.160 Method of collecting assessments. The commission shall by rule or regulation prescribe the method of collection of the assessment, and for that purpose may require handlers receiving wheat from the producer, including warehousemen and processors, to collect producer assessments from producers whose wheat they handle and remit the same to the commission. [1961 c 87 § 16.]

15.63.170 Records, returns of producers and handlers—Form, inspection. Each producer and handler shall keep a complete and accurate record of all wheat grown, handled, shipped, or processed by him. This record shall be in such form and contain such information as the commission may by rule and regulation prescribe, and shall be preserved for a period of two years, and be subject to inspection at any time upon demand of the commission or its agents.

Each producer and handler shall at such times as the commission may by rule or regulation require, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of wheat handled, shipped, or processed by him during the period prescribed by the commission. The return shall contain such further information as the commission shall require.

The commission may inspect the records of any producer or handler during reasonable business hours for the purpose of enforcing this chapter and the collection of the assessment. [1961 c 87 § 17.]

15.63.180 Credit and refund to producers for excess payments. At the end of each fiscal year, the commission shall credit each producer with any amount over one dollar paid by such producer in excess of one-fourth cent per bushel of wheat. Refund may be made upon satisfactory proof given by the producer in accordance with reasonable rules and regulations prescribed by the commission. [1961 c 87 § 18.]

15.63.190 Secretary—treasurer—Bond. The commission shall appoint a secretary—treasurer who shall file with it a bond executed by a surety company authorized to transact surety business in the state of Washington, in favor of the commission and the state, in the penal sum of fifty thousand dollars, guaranteeing the faithful performance of his duties and strict accounting of all funds of the commission. [1961 c 87 § 19.]

15.63.200 Deposits of funds—Use. All moneys received or collected by the commission, or by any other state official from the assessment herein levied or from

any other source in accordance with the terms and provisions of this chapter, shall be paid to the secretary—treasurer, deposited in such banks, which are approved state depositories, as the commission may designate, and disbursed by order of the commission. None of the provisions of RCW 43.01.050 shall be applicable to any moneys received or collected under the terms of this chapter. Moneys received or collected hereunder shall be used only to pay for costs and expenses incurred in effectuating the provisions and purposes of this chapter. [1961 c 87 § 20.]

15.63.210 Liability of commission's assets—Immunity of state, commission, employees, etc., from liability. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee or agent of the commission in his individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees shall be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, save for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member shall be liable for the default of any other member. [1961 c 87 § 21.]

15.63.220 Penalties. Any person who violates or aids in the violation of any provision of this chapter, or any person who violates or aids in the violation of any rule or regulation of the commission shall be guilty of a misdemeanor. [1961 c 87 § 22.]

15.63.230 Enforcement—Injunctions—Venue. All county and state enforcement officers and all employees and agents of the department of agriculture shall aid in the enforcement of this chapter. The superior courts are vested with jurisdiction to enforce the provisions thereof, and the rules and regulations issued thereunder, and to prevent and restrain violations thereof. The commission may bring in its own name an action to enjoin the violation or threatened violation of any provision of this chapter, or any rules adopted under this chapter, notwithstanding the existence of any other remedy at law, and for cause shown may obtain upon prompt hearing a temporary or permanent injunction restraining any person from such violation or threatened violation. Any prosecution brought under this chapter may be instituted in any county of which the defendant, or any defendant, is a resident, or in which the violation was committed, or in which the defendant, or any defendant, has his principal place of business. [1961 c 87 § 23.]

15.63.240 Judicial review. Any party aggrieved by any order, rule or regulation issued by the commission, or by any action taken by it, or by any action taken by the director in approving or disapproving any action of the commission, may apply to the superior court of the state of Washington in the county in which such party is a resident or has his principal place of business for a review of such decision. Where applicable, the procedure for such a review shall be that specified in chapter 34.04 RCW, the administrative procedure act, as in force on the effective date of this chapter, or as thereafter amended. The court may thereupon take such action as in its opinion the law requires and its decision shall be appealable to the supreme court or the court of appeals of this state subject to the laws and rules of court relating to appeals. [1972 ex.s. c 8 § 1; 1971 c 81 § 55; 1961 c 87 § 24.]

Reviser's note: As to the effective date of this chapter [1961 c 87], see RCW 15.63.080, 15.63.910 and 15.63.920.

15.63.900 Severability—1961 c 87. If any section, sentence, clause, or word of this chapter shall be held to be unconstitutional, the invalidity of such section, sentence, clause, or word shall not affect the validity of any other provisions of this chapter, it being the intent of the legislature to enact the remainder of this chapter, notwithstanding the unconstitutionality of any such part. [1961 c 87 § 25.]

15.63.910 Operative, termination date of chapter—Effect of other laws. This chapter shall not take effect and become operative unless and until such time as the wheat commission created by the Marketing Order for Washington Wheat issued on December 4, 1957 by the director, acting under the terms of chapter 15.66 RCW, is declared in a final decision of the supreme court of the state of Washington to have been invalidly created either by reason of the unconstitutionality, in whole or in part, of said chapter or for any other reason. This chapter has been passed in order that continuity of wheat commission activities may be assured throughout the biennium and in the future; therefore, in the event the existing wheat commission should be held by the supreme court of the state of Washington to have been constitutionally and validly created, this chapter shall be of no force and effect whatsoever. [1961 c 87 § 26.]

Order creating wheat commission upheld: Robison v. Dwyer, 58 Wn. (2d) 576, 364 P. (2d) 521 (1961).

15.63.920 Conditional emergency clause. Should the wheat commission created by the Marketing Order for Washington Wheat issued on December 4, 1957 by the director, acting under the terms of chapter 15.66 RCW, be declared to have been unconstitutionally or invalidly created this chapter will become necessary for the preservation of the public peace, health and safety, and the support of the state government and its existing public institutions, and upon the occurrence of that contingency, shall take effect immediately. [1961 c 87 § 27.]

Chapter 15.64 FARM MARKETING

Sections

15.64.010	Director's duties and powers.
15.64.030	Studies of farm marketing problems—Rules.
15.64.040	Use of funds for studies—Joint studies with other agencies.

15.64.010 Director's duties and powers. The director shall investigate and promote the economical and efficient distribution of farm products, and in so doing may cooperate with federal agencies and agencies of this and other states engaged in similar activities. For such purposes he may:

(1) Maintain a market news service by bulletins and through newspapers, giving information as to prices, available supplies of different farm products, demand in local and foreign markets, freight rates, and any other data of interest to producers and consumers;

(2) Aid producers and consumers in establishing economical and efficient methods of distribution, promoting more direct business relations by organizing cooperative societies of buyers and sellers and by other means reducing the cost and waste in the distribution of farm products;

(3) Investigate the methods of middlemen handling farm products, and in so doing, he may hear complaints and suggestions and may visit places of business of all such middlemen and may examine under oath, the officers and employees thereof;

(4) If he finds further legislation on this subject advisable, he shall make recommendations thereon to the governor not later than the fifteenth of November of each even-numbered year;

(5) Investigate the possibilities of direct dealing between the producer and consumer by parcel post and other mail order methods;

(6) Assist in the obtaining and employment of farm labor, and to that end cooperate with federal, state and municipal agencies engaged in similar work;

(7) Investigate the methods, charges and delays of transportation of farm products and assist producers in relation thereto. [1961 c 11 § 15.64.010. Prior: 1917 c 119 § 3; RRS § 2876.]

15.64.030 Studies of farm marketing problems—Rules. The director shall enact rules and regulations governing the pursuit of technical studies of farm marketing problems. Said studies shall be under the supervision of the director of the experimental station of Washington State University. The extension service of Washington State University shall provide for dissemination to the public of knowledge gained by such studies. [1961 c 11 § 15.64.030. Prior: 1947 c 280 § 2; Rem. Supp. 1947 § 2909–2.]

15.64.040 Use of funds for studies—Joint studies with other agencies. Moneys appropriated to the department for agricultural marketing research shall be expended by the department to further studies by the department, the experiment station of Washington State

University and the extension service of Washington State University. The studies shall be made jointly or in conjunction with those made by the United States Department of Agriculture as provided for in the Flannigan-Hope Act, Title II "The Agricultural Marketing Act of 1946" Public Law 733. All funds appropriated shall be expended jointly and as matching funds with any federal funds made available for such purposes. [1961 c 11 § 15.64.040. Prior: 1947 c 280 § 1; Rem. Supp. 1947 § 2909-1.]

Chapter 15.65

WASHINGTON STATE AGRICULTURAL ENABLING ACT OF 1961

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15.65.010 Short title. This chapter shall be known and may be cited as the Washington state agricultural enabling act. [1961 c 256 § 1.]

15.65.020 Definitions. The following terms are hereby defined:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative. The phrase "director or his designee" means the director unless, in the provisions of any marketing agreement or order, he has designated an administrator, board or other designee to act for him in the matter designated, in which case "director or his designee" means for such order or agreement the administrator, board or other person(s) so designated and not the director.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(5) "Agricultural commodity" means any animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including bees and honey and Christmas trees but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or sub-types should be classed together as an agricultural commodity for the purposes of this chapter.

(6) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(7) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(8) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: *Provided*, That in the case of marketing agreements "affected

unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(9) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(10) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer of an affected commodity. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he produces, and a handler with respect to the agricultural commodities which he handles, including those produced by himself.

(13) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(14) "Member of a cooperative association" means any producer who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(15) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(16) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as

the director finds are not less than the minimum which a prudent man engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent man engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case the director may in his discretion: (a) determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he finds to be similarly situated.

(17) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(18) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(19) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

(20) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter.

(21) "Person" as used in this chapter shall mean any person, firm, association or corporation. [1986 c 203 § 15. Prior: 1985 c 457 § 13; 1985 c 261 § 1; 1975 1st ex.s. c 7 § 2; 1961 c 256 § 2.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.65.030 Declaration of purpose and police power.

The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of this chapter to promote the general welfare of the state by enabling producers of agricultural commodities to help themselves, in establishing orderly, fair, sound, efficient and unhampered marketing, grading and standardizing of the commodities they produce, and in promoting and increasing the sale and proper use of such commodities. This chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety and general welfare of the people of this state. [1961 c 256 § 3.]

15.65.040 Declaration of policy. It is hereby declared to be the policy of this chapter:

(1) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

(2) To enable agricultural producers of this state, with the aid of the state: (a) To develop, and engage in research for developing, better and more efficient production, marketing and utilization of agricultural products; (b) to establish orderly marketing of agricultural commodities; (c) to provide for uniform grading and proper preparation of agricultural commodities for market; (d) to provide methods and means (including, but not limited to, public relations and promotion) for the maintenance of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this state and for the prevention, modification or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market; (e) to eliminate or reduce economic waste in the marketing and/or use of agricultural commodities; (f) to restore and maintain adequate purchasing power for the agricultural producers of this state; and (g) to accomplish all the declared policies of this chapter.

(3) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times. [1961 c 256 § 4.]

15.65.050 Director to enforce and administer chapter—Marketing agreements, orders issued, amended, terminated only under chapter, notice, grounds for amendments and termination. The director shall administer and enforce this chapter and it shall be his duty to carry out its provisions and put them into force in accordance with its terms, but issuance, amendment, modification, suspension and/or termination of marketing agreements and orders and of any terms or provisions thereof shall be accomplished according to the procedures set forth in this chapter and not otherwise. Whenever he has reason to believe that the issuance, amendment or termination of a marketing agreement or order will tend to effectuate any declared policy of this chapter with respect to any agricultural commodity, and in the case of application for issuance or amendment ten or more producers of such commodity apply or in the case of application for termination ten percent of the affected producers so apply, then the director shall give due notice of, and an opportunity for, a public hearing upon such issuance, amendment or termination, and he shall issue marketing agreements and orders containing the provisions specified in this chapter and from time to time amend or terminate the same whenever upon compliance with and on the basis of facts adduced in accordance with the procedural requirements of this chapter he shall find that such agreement, order or amendment:

(1) Will tend to effectuate one or more of the declared policies of this chapter and is needed in order to effectuate the same.

(2) Is reasonably adapted to accomplish the purposes and objects for which it is issued and complies with the applicable provisions of this chapter.

(3) Has been approved or favored by the percentages of producers and/or handlers specified in and ascertained in accordance with this chapter. [1961 c 256 § 5.]

15.65.055 Regulatory authority on the production of rapeseed by variety and location. The legislature finds that the production of marketable rapeseed within this state is in the interest of the public welfare. The legislature further finds that the production of incompatible varieties of rapeseed in close geographical proximity adversely affects the purity and marketability of rapeseed, and that it is in the public interest to establish geographical districts and buffer zones wherein the production of rapeseed may be restricted by variety.

For the purpose of rapeseed production in the state of Washington, the director of the department of agriculture shall have the regulatory authority on the production of rapeseed by variety and geographic location until such time as a rapeseed commodity commission is formulated. Once formed, the rapeseed commodity commission shall assume the regulatory authority on the production of rapeseed by variety and geographic location in the state of Washington. [1986 c 203 § 21.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.65.060 Form, filing of proposed agreement, order, amendment, termination and other proceedings. The director shall cause any proposed marketing agreement, order, amendment or termination to be set out in detailed form and reduced to writing, which writing is herein designated "proposal." The director shall make and maintain on file in the office of the department a copy of each proposal and a full and complete record of all notices, hearings, findings, decisions, assents, and all other proceedings relating to each proposal and to each marketing agreement and order. [1961 c 256 § 6.]

15.65.070 Notice of hearing on proposal—Publication—Contents. The director shall publish notice of any hearing called for the purpose of considering and acting upon any proposal for a period of not less than two days in one or more newspapers of general circulation as the director may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice shall set forth the date, time and place of said hearing, the agricultural commodity and the area covered by such proposal; a concise statement of the proposal; a concise statement of each additional subject upon which the director will hear evidence and make a determination, and a statement that, and the address where, copies of the proposal may be obtained. The director shall also mail a copy of such notice to all producers and handlers within the affected area who may be directly affected by such proposal and whose names and addresses appear, on the day next preceding the day on which such notice is published, upon lists of such persons then on file in the department.

[1987 c 393 § 5; 1985 c 261 § 2; 1979 c 154 § 4; 1961 c 256 § 7.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.65.080 Hearings public—Oaths—Record—Administrative law judge, powers. Every hearing held pursuant to this chapter shall be public and all testimony shall be received under oath and a permanent record thereof maintained. An administrative law judge appointed under chapter 34.12 RCW may preside over any inquiry, investigation, hearing, or proceeding held pursuant to this chapter and for such purpose such examiner may exercise any power herein conferred upon the director in connection therewith, including the power to administer oaths, examine witnesses and to issue subpoenas. At each such hearing the director or the administrative law judge shall receive evidence with respect to all of the matters and things upon which he must make a finding. [1981 c 67 § 18; 1961 c 256 § 8.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

15.65.090 Subpoenas—Compelling attendance of witnesses, fees—Immunity of witnesses. In any and every hearing conducted pursuant to any provision of this chapter the director and/or such examiner shall have the power to issue subpoenas for the production of any books, records or documents of any kind and to subpoena witnesses to be produced or to appear (as the case may be) in the county wherein the principal party involved in such hearing resides. No person shall be excused from attending and testifying or from producing documentary evidence before the director in obedience to the subpoena of the director on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no natural person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be so required to testify or produce evidence, documentary or otherwise, before the director in obedience to a subpoena issued by him: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The superior court of the county in which any such hearing or proceeding may be had, may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. In case any witness refuses to attend or testify or produce any papers required by the subpoena, the director or his examiner shall so report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice was given of the time and place of attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that the fees and mileage of the witness have been paid or tendered to him in accordance with RCW 2.40.020 and that he has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in

the notice and subpoena, or has refused to answer questions propounded to him in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel such witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there show cause why he has not responded to the subpoena. A certified copy of the show cause order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued, the court shall enter a decree that said witness appear at the time and place fixed in the decree and testify or produce the required papers, and on failing to obey said decree the witness shall be dealt with as for contempt of court. [1961 c 256 § 9.]

15.65.100 Director's findings and recommended decision, delivery of copies—Taking official notice of facts from other agencies. The director shall make and publish findings based upon the facts, testimony and evidence received at the public hearings together with any other relevant facts available to him from official publications of the United States or any state thereof or any institution of recognized standing and he is hereby expressly empowered to take "official notice" of the same. Such findings shall be made upon every material point controverted at the hearing and/or required by this chapter and upon such other matters and things as the director may deem fitting and proper. The director shall issue a recommended decision based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. [1961 c 256 § 10.]

15.65.110 Filing objections to recommended decision—Final decision—Waiver. After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections or exceptions with the director. Thereafter the director shall take such objections and exceptions as are filed into consideration and shall issue and publish his final decision which may be the same as the recommended decision or may be revised in the light of said objections and exceptions. Upon written waiver executed by all parties of record at any hearing or by their attorneys of record the director may in his discretion omit compliance with the provisions of this section. [1961 c 256 § 11.]

15.65.120 Contents and scope of recommended and final decision—Delivery of copies. The recommended decision shall contain the text in full of any recommended agreement, order, amendment or termination, and may deny or approve the proposal in its entirety, or it may recommend a marketing agreement, order, amendment or termination containing other or different terms or conditions from those contained in the proposal: *Provided*, That the same shall be of a kind or type substantially within the purview of the notice of hearing and

shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The final decision shall set out in full the text of the agreement, order, amendment or termination covered thereby, and the director shall issue and deliver or mail copies of said final decision to all producers and handlers within the affected area who may be directly affected by such final decision and whose names and addresses appear, on the day next preceding the day on which such final decision is issued, upon the lists of such persons then on file in the department, and to all parties of record appearing at the hearing, or their attorneys of record. If the final decision denies the proposal in its entirety no further action shall be taken by the director. [1985 c 261 § 3; 1961 c 256 § 12.]

15.65.130 Agreements binding only on those who assent in writing—Agreement not effective until sufficient signatories to effectuate chapter—When effective. With respect to marketing agreements, the director shall after publication of his final decision, invite all producers and handlers affected thereby to assent or agree to the agreement or amendment set out in such decision. Said marketing agreements or amendments thereto shall be binding upon and only upon persons who have agreed thereto in writing and whose written agreement has been filed with the director: *Provided*, That the filing of such written agreement by a cooperative association shall be binding upon such cooperative and all of its members, and *Provided, further*, That the director shall enter into and put into force a marketing agreement or amendment thereto when and only when he shall find in addition to the other findings specified in this chapter that said marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who handle or produce a sufficient volume of the commodity affected to tend to effectuate the declared policies and purposes of this chapter and to accomplish the purposes and objects of such agreement or amendment thereto and provide sufficient moneys from assessments levied to defray the necessary expenses of formulation, issuance, administration and enforcement. Such agreement shall be deemed to be issued and put into force and effect when the director shall have so notified all persons who have assented thereto. [1961 c 256 § 13.]

15.65.140 Minimum assent requirements prerequisite to order or amendment affecting producers or producer marketing. No marketing order or amendment thereto directly affecting producers or producer marketing shall be issued unless the director determines (in accordance with any of the procedures described at RCW 15.65-.160) that the issuance of such order or amendment is assented to or favored by producers within the affected area who during a representative period determined by the director constituted either (1) at least sixty-five percent by numbers and at least fifty-one percent by volume of production of the producers who have been engaged within the area of production specified in such marketing order in the production for market of the

commodity specified therein, or who during such representative period have been engaged in the production of such commodity for marketing in the marketing area specified in such marketing order, or (2) at least fifty-one percent by numbers and at least sixty-five percent by volume of production of such producers: *Provided*, That producers shall be deemed to have assented to or approved a proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent or approve the proposed order in a referendum. [1985 c 261 § 4; 1975 1st ex.s. c 7 § 3; 1961 c 256 § 14.]

15.65.150 Minimum requirements prerequisite to order or amendment assessing handlers—Assent by producers. Any marketing order or amendment thereto directly assessing handlers shall be issued either (1) when the director determines that the issuance of such order or amendment is assented to or favored by handlers who during a representative period determined by the director constituted at least fifty-one percent by numbers or fifty-one percent by volume handled of the handlers who have been engaged in the handling of the commodity specified in such marketing order produced in such production area or marketed in such marketing area, as the case may be, or (2) when upon the basis of findings on a duly noticed hearing held in the manner herein provided, the director determines:

(a) That the issuance of such order or amendment will not result in unequal cost of product or availability of supplies, or cause competitive disadvantage of other respects as between handlers;

(b) That the issuance of such order or amendment is the only practical means of advancing the interest of producers of such commodity pursuant to the declared policy of this chapter and that failure to issue such order or amendment would tend to prevent effectuation of the declared policies of this chapter;

(c) That the issuance of such order is assented to or favored by producers who during a representative period determined by the director constituted at least seventy-five percent by numbers or at least sixty-five percent by volume of production of the producers who have been engaged within the production area specified in such marketing order in the production for market of the commodity specified therein, or who during such representative period have been engaged in the production of such commodity for sale in the marketing area specified in such order. [1985 c 261 § 5; 1961 c 256 § 15.]

15.65.160 Ascertainment of required assent percentages. After publication of his final decision, the director shall ascertain (either by written agreement in accordance with subdivision (1) of this section or by referendum in accordance with subdivision (2) of this section) whether the above specified percentages of producers and/or handlers assent to or approve any proposed order, amendment or termination, and for such purpose:

(1) The director may ascertain whether assent or approval by the percentages specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) have

been complied with by written agreement, and the requirements of assent or approval shall, in such case, be held to be complied with, if of the total number of affected producers or affected handlers within the affected area and the total volume of production of the affected commodity or product thereof, the percentages evidencing assent or approval are equal to or in excess of the percentages specified in said sections; or

(2) The director may conduct a referendum among producers within the affected area and the requirements of assent or approval shall be held to be complied with if of the total number of such producers and the total volume of production represented in such referendum the percentage assenting to or favoring is equal to or in excess of the percentage specified in RCW 15.65.140, 15.65.150 or 15.65.190 (whichever is applicable) as now or hereafter amended: *Provided*, That thirty percent of the affected producers within the affected area producing thirty percent by volume of the affected commodity have been represented in a referendum to determine assent or approval of the issuance of a marketing order: *Provided further*, That a marketing order shall not become effective when the provisions of subdivision (3) of this section are used unless sixty-five percent by number of the affected producers within the affected area producing fifty-one percent by volume of the affected commodity or fifty-one percent by number of such affected producers producing sixty-five percent by volume of the affected commodity approve such marketing order;

(3) The director shall consider the assent or dissent or the approval or disapproval of any cooperative marketing association authorized by its producer members either by a majority vote of those voting thereon or by its articles of incorporation or by its bylaws or by any marketing or other agreement to market the affected commodity for such members or to act for them in any such referendum as being the assent or dissent or the approval or disapproval of the producers who are members of or stockholders in or under contract with such cooperative association of producers: *Provided*, That the association shall first determine that a majority of its affected producers authorizes its action concerning the specific marketing order. [1985 c 261 § 6; 1975 1st ex.s. c 7 § 4; 1961 c 256 § 16.]

15.65.170 Issuance of order or amendment—Publication—Force and effect. If the director determines that the requisite assent has been given he shall issue and put any order or amendment thereto into force, whereupon each and every provision thereof shall have the force of law. Issuance shall be accomplished by publication of a notice for one day in a newspaper of general circulation in the affected area. The notice shall state that the order has been issued and put into force and where copies of such order may be obtained. If the director determines that the requisite assent has not been given no further action shall be taken by the director upon the proposal, and the order contained in the final decision shall be without force or effect. [1987 c 393 § 6; 1961 c 256 § 17.]

15.65.180 Amendment, suspension of agreement or order upon advice of commodity board—Certain prerequisites waived. The director may, upon the advice of the commodity board serving under any agreement or order and without compliance with the provisions of RCW 15.65.050 through 15.65.170:

(1) Amend any marketing agreement or order as to any minor matter or wording which does not substantially alter the provisions and intention of such agreement or order;

(2) Suspend any such agreement or order or term or provision thereof for a period of not to exceed one year, if he finds that such suspension will tend to effectuate the declared policy of this chapter: *Provided*, That any such suspension of all or substantially all of such agreement or order shall not become effective until the end of the then current marketing season. [1961 c 256 § 18.]

15.65.190 Termination of agreement or order on assent of producers—Procedure. Any marketing agreement or order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers within the affected area favor or assent to such termination. The director may ascertain without compliance with the provisions of RCW 15.65.050 through 15.65.130 whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of said producers file written application with him for such termination. No such termination shall become effective until the expiration of the marketing season then current. [1985 c 261 § 7; 1961 c 256 § 19.]

15.65.200 Lists of producers, handlers, commodities—Correction—Purpose and use. Whenever application is made for the issuance of a marketing agreement or order or the director otherwise determines to hold a hearing for the purpose of such issuance, the director or his designee shall cause lists to be prepared from any information which he has at hand or which he may obtain from producers, associations of producers and handlers of the affected commodity. Such lists shall contain the names and addresses of persons who produce the affected commodity within the affected area, the amount of such commodity produced by each such person during the period which the director determines for the purposes of the agreement or order to be representative, and the name of any cooperative association authorized to market for him within the affected area the commodity specified in the marketing agreement or order. Such lists shall also contain the names and addresses of persons who handle the affected commodity within the affected area and the amount of such commodity handled by each person during the period which the director determines for the purposes of the agreement or order to be representative. Any qualified person may at any time have his name placed upon any list for which he qualifies by delivering or mailing his name, address and other information to the director and in

such case the director shall verify such person's qualifications and if he qualifies, place his name upon such list. At every hearing upon the issuance, amendment or termination of such order or agreement the director or his designee shall take evidence for the purpose of making such lists complete and accurate and he may employ his powers of subpoena of witnesses and of books, records and documents for such purpose. After every such hearing the director shall compile, complete, correct and bring lists up to date in accordance with the evidence and information obtained at such hearing. For all purposes of giving notice, holding referenda and electing members of commodity boards, the lists on hand corrected up to the day next preceding the date for issuing notices or ballots as the case may be shall, for all purposes of this chapter, be deemed to be the list of all persons entitled to notice or to assent or dissent or to vote. [1985 c 261 § 8; 1961 c 256 § 20.]

15.65.210 Powers and duties of director with respect to the administration and enforcement of agreements and orders—Administrator—Personnel. The director shall administer, enforce, direct, and control every marketing agreement and order in accordance with its provisions. For such purposes he shall include in each order and he may include in each agreement provisions for the employment of such administrator and such additional personnel (including attorneys engaged in the private practice of law, subject to the approval and supervision of the attorney general) as he determines are necessary and proper for such order or agreement to effectuate the declared policies of this chapter. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal and the detailed powers and duties to be exercised by such administrator or board and by such additional personnel, including the authority to borrow money and incur indebtedness, and may also provide either that the said administrative board shall be the commodity board or that the administrator or administrative board be designated by the director or the governor. [1977 ex.s. c 26 § 4; 1961 c 256 § 21.]

15.65.220 Commodity boards—Membership—Agreement or order to establish and control. Every marketing agreement and order shall provide for the establishment of a commodity board of not less than five nor more than thirteen members and shall specify the exact number thereof and all details as to qualification, nomination, election, term of office, powers, duties and all other matters pertaining to such board. The members of the board shall be producers or handlers or both in such proportion as the director shall specify in the agreement or order, but in any marketing order the number of handlers on the board shall not exceed the number of producers thereon. The director shall appoint to every such board one person who is neither a producer nor a handler to represent the department and the public generally. [1961 c 256 § 22.]

15.65.230 Qualifications of members of commodity boards. The producer members of each such board shall be practical producers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in producing such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom and who is not engaged in business, directly or indirectly, as a handler or other dealer. The handler members of such board shall be practical handlers of the affected commodity and shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been, either individually or as an officer or employee of a corporation, firm, partnership, association or cooperative, actually engaged in handling such commodity within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom. The qualification of members of the board as herein set forth must continue during their terms of office. [1961 c 256 § 23.]

15.65.235 Producer-handlers as producers for qualification purposes—Exception. Whenever any commodity board is formed under the provisions of this chapter and it only affects producers and producer-handlers, then such producer-handlers shall be considered to be acting only as producers for purpose of election and membership on a commodity board: *Provided*, That this section shall not apply to a commodity board which only affects producers and producer-handlers of essential oils. [1971 c 25 § 1.]

15.65.240 Terms of members of commodity boards—Elections. The term of office of board members shall be three years, and one-third as nearly as may be shall be elected every year: *Provided*, That at the inception of any agreement or order the entire board shall be elected one-third for a term of one year, one-third for a term of two years and one-third for a term of three years to the end that memberships on such board shall be on a rotating basis. In the event an order or agreement provides that both producers and handlers shall be members of such board the terms of each type of member shall be so arranged that one-third of the handler members as nearly as may be and one-third of the producer members as nearly as may be shall be elected each year.

Any marketing agreement or order may provide for election of board members by districts, in which case district lines and the number of board members to be elected from each district shall be specified in such agreement or order and upon such basis as the director finds to be fair and equitable and reasonably adapted to effectuate the declared policies of this chapter. [1961 c 256 § 24.]

15.65.250 Nominations for election to commodity board. For the purpose of nominating candidates to be voted upon for election to such board memberships, the

director shall call separate meetings of the affected producers and handlers within the affected area and in case elections shall be by districts he shall call separate meetings for each district. However, at the inception any marketing agreement or order nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers and/or handlers according to the list thereof maintained by the director pursuant to RCW 15.65.200. However, if the agreement or order provides for election by districts such written notice need be given only to the producers or handlers residing in or whose principal place of business is within such district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings. Any qualified person may be nominated orally for membership upon such board at the said meetings. Nominations may also be made within five days after any such meeting by written petition filed with the director signed by not less than five producers or handlers, as the case may be, entitled to have participated in said meeting.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. The notice shall call for nominations in accordance with the marketing order and shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

When only one nominee is nominated for any position on the board the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected. [1987 c 393 § 7; 1985 c 261 § 9; 1975 1st ex.s. c 7 § 5; 1961 c 256 § 25.]

15.65.260 Election of members of commodity board—Procedure. The members of every such board shall be elected by secret mail ballot under the supervision of the director. Producer members of such board shall be elected by a majority of the votes cast by the affected producers within the affected area, but if the marketing order or agreement provides for districts such producer members of the board shall be elected by a majority of the votes cast by the affected producers in the respective districts. Each affected producer within the affected area shall be entitled to one vote. Handler members of the board shall be elected by a majority of the votes cast by the affected handlers within the affected area, but if the marketing order or agreement provides for districts such handler members of the board shall be elected by a majority of the votes cast by the affected handlers in the respective districts. Each affected handler within the affected area shall be entitled to one vote.

If a nominee does not receive a majority of the votes on the first ballot a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each producer and handler entitled to vote whose name appears upon the list thereof compiled and maintained by the director in accordance with RCW 15.65.200. Any other producer or handler entitled to vote may obtain a ballot by application to the director upon establishing his qualifications. Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election of any board member. [1985 c 261 § 10; 1961 c 256 § 26.]

15.65.270 Vacancies, quorum, compensation, travel expenses of commodity board members. In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term. A majority of the voting members of the board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board. Each member of the board shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses at the rates allowed state employees in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 16; 1975-'76 2nd ex.s. c 34 § 19; 1961 c 256 § 27.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.65.280 Powers and duties of commodity board—Reservation of power to director. The powers and duties of the board shall be:

- (1) To elect a chairman and such other officers as it deems advisable;
- (2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;
- (3) To recommend to the director administrative rules, regulations and orders and amendments thereto for the exercise of his powers in connection with such agreement or order;
- (4) To advise the director upon any and all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;
- (5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;
- (6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so requested by the affected producers within the affected area in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter. [1985 c 261 § 11; 1961 c 256 § 28.]

15.65.283 Members may belong to association with same objectives—Contracts with other associations authorized. Any member of an agricultural commodity board may also be a member or officer of an association which has the same objectives for which the agricultural commodity board was formed. An agricultural commodity board may also contract with such association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 1.]

15.65.285 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commodity boards. The restrictive provisions of chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for any commodity board. [1972 ex.s. c 112 § 2.]

15.65.290 Claims and liabilities, enforcement against organization—Personal liabilities of officials, employees, etc. Obligations incurred by any administrator or board or employee or agent thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required or permitted them by this chapter or any marketing agreement or order issued pursuant to this chapter, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under such marketing agreement or order were a corporation. No liability for the debts or actions of such administrator, board, employee or agent incurred in their official capacity under the agreement or order shall exist either against its administrator, board, officers, employees and/or agents in his or their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator or board (or employee or agent thereof) established pursuant to this chapter or the assets thereof. The administrator of any order or agreement, the members of any such board, and also his or their agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any

other administrator, board, member of any such board, or other person. The liability of the members of any such board shall be several and not joint and no member shall be liable for the default of any other member. [1961 c 256 § 29.]

15.65.300 Agreement or order to contain detailed statement of powers and purposes. The purposes for which each marketing agreement and order is issued and the powers which shall be exercised thereunder shall be stated in detail in the provisions of such agreement or order. Any such agreement or order or amendment thereto may contain provisions for the exercise of any one or more or all of the powers and purposes set forth in RCW 15.65.310 through 15.65.340. However, any agreement, order or amendment wherein the affected commodity is one of those listed below shall contain provisions for the exercise of only those powers and purposes contained in said RCW 15.65.310 through 15.65.340 set after its name below, to wit:

(1) Wheat, RCW 15.65.310, 15.65.320 and 15.65.330. [1961 c 256 § 30.]

15.65.310 Advertising, sale, trade barrier, claim, etc., provisions in agreement or order. Any marketing agreement or order may provide for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for the affected commodity. It may also provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market. Each such order or agreement and all programs thereunder shall be directed toward increasing the sale of such commodity without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of such commodity nor disparage the quality, value, sale or use of any other agricultural commodity. [1961 c 256 § 31.]

15.65.320 Agreement and order provisions for research. Any marketing agreement or order may provide for research in the production, processing and/or distribution of the affected commodity and for the expenditure of money for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington state university but if in the judgment of the director or his designee said experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the director or his designee. [1961 c 256 § 32.]

15.65.330 Agreement and order provisions for uniform grades and standards—Enforcement—Rules. Any marketing agreement or order may contain provisions which directly provide for, or which authorize the director or his designee to provide by rules and regulations for, any one or more, or all, of the following: (1) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages and/or

label for the affected commodity or any products thereof; (2) requiring producers, handlers and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling or otherwise commercially disposing of the affected commodity and/or in offering, advertising and/or delivering it therefor; (3) providing for inspection and enforcement to ascertain and effectuate compliance; (4) establishing rules and regulations respecting the foregoing; (5) providing that the director or his designee shall carry out inspection and enforcement of, and may (within the general provisions of the agreement or order) establish detailed provisions relating to, such standards and grades and such rules and regulations: *Provided*, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of this chapter. [1961 c 256 § 33.]

15.65.340 Agreement and order provisions prohibiting or regulating certain practices. Any marketing agreement or order may contain provisions prohibiting and/or otherwise regulating any one or more or all of the practices listed to the extent that such practices affect, directly or indirectly, the commodity which forms the subject matter of such agreement or order or any product thereof, but only with respect to persons who engage in such practices with the intent of or with the reasonably foreseeable effect of inducing any purchaser to become his customer or his supplier or of otherwise dealing or trading with him or of diverting trade from a competitor, to wit:

(1) Paying rebates, commissions or unearned discounts;

(2) Giving away or selling below the true cost (which includes all direct and indirect costs incurred to the point of sale plus a reasonable margin of mark-up for the seller) any of the affected commodities or of any other commodity or product thereof;

(3) Unfairly extending privileges or benefits (pertaining to price, to credit, to the loan, lease or giving away of facilities, equipment or other property or to any other matter or thing) to any customer, supplier or other person;

(4) Discriminating between customers, or suppliers of like class;

(5) Using the affected or any other commodity or product thereof as a loss leader or using any other device whereby for advertising, promotional, come-on or other purposes such commodity or product is sold below its fair value;

(6) Making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons. Such regulation shall not prevent any person (a) from selling below cost to liquidate excess inventory which cannot otherwise be moved, or (b) from meeting the equally low legal price of any competitor within any one trading area during any one trading period and the director may define in said marketing

agreement or order said trading area and said trading period in accordance with generally accepted industry practices; but in any event the burden of proving that such selling was to meet the equally low legal price of a competitor or to liquidate said excess inventory shall be upon the person who sells below cost as above defined. Any marketing agreement or order may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices. [1961 c 256 § 34.]

15.65.350 Agreement and order to define applicable area—"Production area"—"Marketing area". Every marketing agreement and order shall define the area to which it applies which may be all or any contiguous portion of the state. Such area may be defined as a "production area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is produced within such production area and sold, marketed or delivered for sale or marketing. Such area may be defined as a "marketing area" in which case such agreement or order shall regulate or apply with respect to all of the commodity specified in such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing or distribution or processing or consumption within such marketing area. [1985 c 261 § 12; 1961 c 256 § 35.]

15.65.360 Agreement and order provisions for marketing information, services, verification of grades, standards, sampling, etc. Any marketing agreement or order may provide for marketing information and services to producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of the agricultural product purchased by handlers from producers. [1961 c 256 § 36.]

15.65.370 Agreement or order not to prohibit or discriminatorily burden marketing. No marketing agreement or order or amendment thereto shall prohibit or discriminatorily burden the marketing in its area of any agricultural commodity or product thereof produced in any production area of the United States. [1961 c 256 § 37.]

15.65.380 Additional agreement or order provisions—Rules of technical or administrative nature authorized. Any marketing agreement or order may contain any other, further and different provisions which are incidental to and not inconsistent with this chapter and which the director finds to be needed and reasonably adapted to effectuate the declared policies of this chapter. Such provisions shall set forth the detailed application of this chapter to the affected agricultural commodity. The director or his designee shall have the power to make rules and regulations of a technical or administrative nature under this chapter and/or under

any agreement or order issued pursuant to this chapter. [1961 c 256 § 38.]

15.65.390 Annual assessment—Limitation generally. There is hereby levied, and the director or his designee shall collect, upon each and every affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer thereof upon each and every such affected unit stored in frozen condition or sold or marketed or delivered for sale or marketed by him, and which shall be paid by the handler thereof upon each and every such unit purchased or received for sale, processing or distribution, or stored in frozen condition, by him: *Provided*, That such assessment shall be paid by producers only, if only producers are regulated by such agreement or order, and by handlers only, if only handlers are so regulated, and by both producers and handlers if both are so regulated. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. The total amount of such annual assessment to be paid by all producers of such commodity, or by all handlers of such commodity shall not exceed four percent of the total market value of all affected units stored in frozen condition or sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies. [1987 c 393 § 9; 1985 c 261 § 13; 1961 c 256 § 39.]

15.65.400 Rate of assessment. In every marketing agreement and order the director shall prescribe the rate of such assessment. Such assessment shall be expressed as a stated amount of money per unit or as a percentage of the receipt price at the first point of sale. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. Such rate may be altered or amended from time to time, but only upon compliance with the procedural requirements of this chapter. In every such marketing agreement, order and amendment the director shall base his determination of such rate upon the volume and price of sales of affected units (or units which would have been affected units had the agreement or order been in effect) during a period which the director determines to be a representative period. The rate of assessment prescribed in any such agreement, order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate. [1987 c 393 § 10; 1961 c 256 § 40.]

15.65.410 Time, place, method for payment and collection of assessments. The director shall prescribe in each marketing order and agreement the time, place and method for payment and collection of assessments under such order or agreement upon any uniform basis applicable alike to all producers subject to such assessment, and upon the same or any other uniform basis applicable alike to all handlers subject to such assessment. For such

purpose the director may, by the terms of the marketing order or agreement:

(1) Require stamps to be purchased from him or his designee and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon); or

(2) Require handlers to collect producer assessments from producers whose production they handle and remit the same to the director or his designee; or

(3) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(4) Require in the case of assessments against affected units stored in frozen condition:

(a) Cold storage facilities storing such commodity to file information and reports with the department or affected commission regarding the amount of commodity in storage, the date of receipt, and the name and address of each such owner; and

(b) That such commodity not be shipped from a cold storage facility until the facility has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by the marketing order.

Unless the director has otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, carried, shipped, sold, marketed or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid by the producer or first handler and the receipt issued. [1985 c 261 § 14; 1961 c 256 § 41.]

15.65.420 Use of moneys collected—Departmental expenses. Moneys collected by the director or his designee pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon, shall be used by the director or his designee only for the purpose of paying for expenses and costs arising in connection with the formulation, issuance, administration and enforcement of such order or agreement and carrying out its provisions together with a proportionate share of the overhead expenses of the department attributable to its performance of its duties under this chapter with respect to such marketing order or agreement. [1961 c 256 § 42.]

15.65.430 Refunds of moneys received or collected. Any moneys collected or received by the director or his designee pursuant to the provisions of any marketing agreement or order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the director determines to be reasonably adapted to effectuate the declared policies of this chapter and the purposes of such marketing agreement or order, to all

persons from whom such moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the director or his designee finds that the same will tend to effectuate such policies and purposes. Upon the termination of any marketing agreement or order, any and all moneys remaining, and not required to defray the expenses or repay the obligations incurred and undertaken pursuant to such agreement or order, shall be returned by the director upon a pro rata basis to all persons from whom such moneys were collected or received. However, if the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the director may use such moneys to defray expenses incurred by him in the formulation, issuance, administration or enforcement of any subsequent marketing agreement or order for such commodity. Thereafter, if there are any such moneys remaining which have not been used by the director as hereinabove provided, the same shall be withdrawn from the approved depository and paid into the state treasury as unclaimed trust moneys. [1961 c 256 § 43.]

15.65.440 Assessments personal debt—Additional percentage if not paid—Civil action to collect. Any due and payable assessment herein levied in such specified amount as may be determined by the director or his designee pursuant to the provisions of this chapter and such agreement or order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the director or his designee when payment is called for by him. In the event any person fails to pay the director or his designee the full amount of such assessment or such other sum on or before the date due, the director or his designee may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the director or his designee may bring a civil action against such person or persons in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1985 c 261 § 15; 1961 c 256 § 44.]

15.65.450 Deposit to defray expenses of preparing and effectuating agreement or order—Reimbursement. Prior to the issuance of any marketing agreement or order, the director may require the applicants therefor to deposit with him such amount of money as the director may deem necessary to defray the expenses of preparing and making effective such agreement or order. The director or his designee may reimburse the applicant from any moneys received by him under such agreement or order for any moneys so deposited by such applicant and/or for any necessary expenses incurred by such applicant in preparing and obtaining approval of such

marketing agreement or order upon receipt of a verified statement of such expense approved by the director or his designee. [1961 c 256 § 45.]

15.65.460 Marketing act revolving fund—Composition. There shall be a fund known as the "marketing act revolving fund" which shall consist of all assessments, fees, penalties, forfeitures and all other moneys, income or revenue received or collected pursuant to the provisions of this chapter and of all marketing orders and agreements issued pursuant to this chapter. None of the provisions of RCW 43.01.050 shall be applicable to such fund nor to any of the moneys so received or collected. [1961 c 256 § 46.]

15.65.470 Depositories for revolving fund—Deposits. The director or his or her designee shall designate financial institutions which are qualified public depositories under chapter 39.58 RCW as depository or depositories of money received for the marketing act revolving fund. All moneys received by the director or his or her designee or by any administrator, board or employee, except an amount of petty cash for each day's needs as fixed by the regulations, shall be deposited each day in a designated depository. [1987 c 393 § 8; 1961 c 256 § 47.]

15.65.480 Separate accounts for each agreement or order—Disbursements. The director and each of his designees shall deposit or cause to be deposited all moneys which are collected or otherwise received by them pursuant to the provisions of this chapter in a separate account or accounts separately allocated to each marketing order or agreement under which such moneys are collected or received, and such deposits and accounts shall be in the name of and withdrawable by the check or draft of the administrator or board or designated employee thereof established by such order or agreement. All expenses and disbursements incurred and made pursuant to the provisions of any marketing agreement or order, including a pro rata share of the administrative expenses of the department of agriculture incurred in the general administration of this chapter and all orders and agreements issued pursuant thereto, shall be paid from, and only from, moneys collected and received pursuant to such order or agreement and all moneys deposited for the account of any order or agreement in the marketing act revolving fund shall be paid from said account of such fund by check, draft or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the director or his designee. [1961 c 256 § 48.]

15.65.490 Records of financial transactions to be kept by director—Audits. The director and each of his designees shall keep or cause to be kept separately for each agreement and order in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to such

order or agreement, and the same shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts maintained under every such agreement and order shall be closed as of the last day of each fiscal year of the state of Washington or of a fiscal year determined by the director. A copy of every such audit shall be delivered within thirty days after the completion thereof to the governor and the commodity board of the agreement or order concerned. [1982 c 81 § 1; 1979 c 154 § 5; 1973 c 106 § 10; 1961 c 256 § 49.]

Severability—1979 c 154: See note following RCW 15.49.330.

15.65.500 Bonds of administrator, board, employee. The director or his designee shall require that a bond be given by every administrator, administrative board and/or employee occupying a position of trust under any marketing agreement or order, in such amount as the director or his designee shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement: *Provided*, That such bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the state of Washington. [1961 c 256 § 50.]

15.65.510 Informational reports required—Examinations, hearings to obtain—Confidentiality and disclosures. All parties to any marketing agreement and all producers, handlers and other persons subject to any marketing order shall severally from time to time, upon the request of the director or his designee, furnish him with such information as he finds to be necessary to enable him to effectuate the declared policies of this chapter and the purposes of such agreement or order or to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemption from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director or his designee. For the purpose of ascertaining the correctness of any report made to the director or his designee pursuant to this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the director or his designee is hereby authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he deems relevant and which are within the control:

(1) Of any such party to such marketing agreement or any such producer or handler under such marketing order from whom such report was requested, or

(2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or

(3) Of any subsidiary of any such party, producer, handler or person.

To carry out the purposes of this section the director or his designee upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind. RCW 15.65.080, 15.65.090, 15.65.100 and 15.65.110, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or his designee pursuant to this section shall be kept confidential by all officers and employees of the director and/or his designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by him or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which he or his designee or any officer of the state of Washington is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Nothing in this section shall prohibit:

(1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person, or

(2) The publication by the director or his designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person. [1961 c 256 § 51.]

15.65.520 Criminal acts and penalties. It shall be a misdemeanor:

(1) For any person to violate any provision of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter.

(2) For any person to wilfully render or furnish a false or fraudulent report, statement or record required by the director pursuant to the provisions of this chapter or any provision of any marketing agreement or order duly issued by the director pursuant to this chapter or to wilfully fail or refuse to furnish or render any such report, statement or record so required.

(3) For any person engaged in the wholesale or retail trade to fail or refuse to furnish to the director or his designee or his duly authorized agents, upon request, information concerning the name and address of the person from whom he has received an agricultural commodity regulated by a marketing agreement or order in effect and issued pursuant to the terms of this chapter and the grade, standard, quality or quantity of and the price paid for such commodity so received.

Every person convicted of any such misdemeanor shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment. Each violation during any day shall constitute a separate offense: *Provided*,

That if the court finds that a petition pursuant to RCW 15.65.570 was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under clause (1) of this section for such violations as occurred between the date upon which the defendant's petition was filed with the director and the date upon which notice of the director's decision thereon was given to the defendant in accordance with RCW 15.65.570 and regulations prescribed pursuant thereto. [1961 c 256 § 52.]

15.65.530 Civil liability—Use of moneys recovered. Any person who violates any provisions of this chapter or any marketing agreement or order duly issued and in effect pursuant to this chapter or who violates any rule or regulation issued by the director and/or his designee pursuant to the provisions of this chapter or of any marketing agreement or order duly issued by the director and in effect pursuant to this chapter, shall be liable civilly for a penalty in an amount not to exceed the sum of five hundred dollars for each and every violation thereof. Any moneys recovered pursuant to this paragraph shall be allocated to and used for the purposes of the agreement or order concerned. [1961 c 256 § 53.]

15.65.540 Jurisdiction of superior courts—Who may bring action. The several superior courts of the state of Washington are hereby vested with jurisdiction:

(1) Specifically to enforce this chapter and the provisions of each and every marketing agreement and order issued pursuant to this chapter and each and every term, condition and provision thereof;

(2) To prevent, restrain and enjoin pending litigation and thereafter permanently any person from violating this chapter or the provisions of any such agreement or order and each and every term, condition and provision thereof, regardless of the existence of any other remedy at law.

(3) To require pending litigation and thereafter permanently by mandatory injunction each and every person subject to the provisions of any such agreement or order to carry out and perform the provisions of this chapter and each and every duty imposed upon him by such marketing agreement or order.

The director or any administrator or board under any marketing agreement or order, in the name of the state of Washington, or any person affected or regulated by or subject to any marketing order or agreement issued pursuant to this chapter upon joining the director as a party may bring or cause to be brought actions or proceedings for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by this chapter or by any marketing agreement or order issued pursuant to this chapter and said courts shall have jurisdiction of such cause and shall grant such relief upon proof of such violation or threatened violation or refusal. [1961 c 256 § 54.]

15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director.

Upon the request of the director or his designee, it shall be the duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this chapter. Whenever the director and/or his designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this chapter, the director and/or his designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in RCW 15.65.080, 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings. [1961 c 256 § 55.]

15.65.560 Remedies additional. The remedies provided for in this chapter shall be in addition to, and not exclusive of, any other remedies or penalties provided for in this chapter or now or hereafter existing at law or in equity, and such remedies shall be concurrent and alternative and neither singly nor combined shall the same be exclusive. [1961 c 256 § 56.]

15.65.570 Proceedings subject to administrative procedure act. All proceedings held by the director for the promulgation of any marketing agreement or order and the amendment, modification, or dissolution thereof and all proceedings concerning the promulgation of any rules or regulations or the amendment or modification thereof and appeals therefrom shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended. [1961 c 256 § 57.]

15.65.580 Director may issue agreement or order similar to license or order issued by United States—Administrator, board. In the event the director finds that it tends to effectuate the declared purposes of this chapter within the standards prescribed in this chapter, the director may issue a marketing agreement or order, applicable to the marketing, within the state of Washington of any agricultural commodity, containing like terms, provisions, methods and procedures as any license or order regulating the marketing of such commodity in interstate or foreign commerce, issued by the secretary of agriculture of the United States pursuant to the provisions of any law or laws of the United States. In selecting an administrator or the members of any board or other agency under such marketing order, the director may utilize the same persons as those serving in a similar capacity under such federal license or order, so as to avoid duplicating or conflicting personnel: *Provided*, That any administrator, board or agency so appointed by the director shall be responsible to the director for the performance of such of their duties as relate to the administration of any such marketing agreement or order issued by the director hereunder. [1961 c 256 § 58.]

15.65.590 Cooperation, joint agreements or orders with other states and United States to achieve uniformity. The director and his designee are hereby authorized to confer with and cooperate with the legally constituted authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders, and the director is authorized to conduct joint hearings, issue joint or concurrent marketing agreements or orders, for the purposes and within the standards set forth in this chapter, and may exercise any administrative authority prescribed by this chapter to effect such uniformity of administration and regulation. [1961 c 256 § 59.]

15.65.600 Public interest to be protected—Establishment of prices prohibited. The director shall protect the public interest and the interest of all consumers and producers of every agricultural commodity regulated by every marketing agreement and order issued pursuant to this chapter and shall neither take nor authorize any action which shall have for its purpose the establishment or maintenance of prices. [1961 c 256 § 60.]

15.65.610 Orders, rules of Washington utilities and transportation commission and interstate commerce commission not affected. Nothing in this chapter contained shall apply to any order, rule or regulation issued or issuable by the Washington utilities and transportation commission or the interstate commerce commission with respect to the operation of common carriers. [1961 c 256 § 61.]

15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter. Nothing in this chapter shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple advertising commission (RCW 15.24.010–15.24.210 inclusive), to the soft tree fruits commission (RCW 15.28.010–15.28.310 inclusive), or to dairy products commission (RCW 15.44.010–15.44.180 inclusive), or to wheat commission (RCW 15.63.010–15.63.920 inclusive). No marketing agreement or order containing any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this chapter shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (chapter 15.66 RCW); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this chapter upon compliance with the provisions of this chapter relating to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this chapter shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this chapter. [1961 c 256 § 62.]

15.65.630 Application of chapter to canners, freezers, pressers, dehydrators of fruit or vegetables. Except for the provisions of this chapter relating to levying, collecting, and paying assessments, nothing in this chapter shall apply to any person engaged in the canning, freezing, pressing, or dehydrating of fresh fruit or vegetables. [1985 c 261 § 16; 1961 c 256 § 63.]

15.65.640 Chapter not to apply to green pea grower or processor. Nothing in this chapter shall apply to any person engaged in growing of or processing green peas. [1961 c 256 § 64.]

15.65.900 Savings—1961 c 256. This chapter shall not repeal, amend or modify chapter 15.66 RCW, or any other law providing for the marketing of agricultural commodities and/or providing for marketing agreements or orders for such agricultural commodities, which shall be in existence on the date this act becomes effective. [1961 c 256 § 65.]

Reviser's note: The effective date of this act was midnight June 7, 1961, see preface 1961 session laws.

15.65.910 Severability—1961 c 256. If any section, sentence, clause or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, clauses or parts thereof be declared unconstitutional. [1961 c 256 § 66.]

Chapter 15.66

WASHINGTON AGRICULTURAL ENABLING ACT OF 1955

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Investment of agricultural commodity commission funds in savings or time deposits of banks, trust companies and mutual savings banks: RCW 30.04.370.

15.66.010 Definitions. For the purposes of this chapter:

(1) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him concerning some matter under this chapter.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Marketing order" means an order issued by the director pursuant to this chapter.

(4) "Agricultural commodity" means any animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including bees and honey and Christmas trees but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity. For the purposes of RCW 15.66.060, 15.66.090, and 15.66.120, as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Affected producer" means any producer of an affected commodity.

(7) "Affected commodity" means any agricultural commodity for which the director has established a list of producers pursuant to RCW 15.66.060.

(8) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this

chapter under a particular marketing order concerning an affected commodity.

(9) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(10) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(11) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(12) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(13) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product. [1986 c 203 § 16; 1985 c 457 § 14; 1983 c 288 § 6; 1982 c 35 § 180; 1975 1st ex.s. c 7 § 6; 1961 c 11 § 15.66.010. Prior: 1955 c 191 § 1.]

Severability—1986 c 203: See note following RCW 15.04.100.

Short title—**Purposes**—1983 c 288: See note following RCW 19.86.090.

Intent—**Severability**—**Effective dates**—**Application**—1982 c 35: See notes following RCW 43.07.160.

15.66.020 Declaration of purpose. The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of this chapter to promote the general welfare of the state by enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient and unhampered marketing, grading and standardizing of the commodities they produce, and in promoting and increasing the sale of such commodities. [1961 c 11 § 15.66.020. Prior: 1955 c 191 § 2.]

15.66.025 Regulatory authority on the production of rapeseed by variety and location. For the purpose of

rapeseed production in the state of Washington, the director of the department of agriculture shall have the regulatory authority on the production of rapeseed by variety and geographical location until such time as a rapeseed commodity commission is formulated. Once formed, the rapeseed commodity commission shall assume the regulatory authority on the production of rapeseed by variety and geographic location in the state of Washington. [1986 c 203 § 22.]

Severability—1986 c 203: See note following RCW 15.04.100.

15.66.030 Marketing orders authorized. Marketing orders may be made for any one or more of the following purposes:

(1) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets or to create new or larger markets for any agricultural commodity grown in the state of Washington;

(2) To provide for carrying on research studies to find more efficient methods of production, processing, handling and marketing of any agricultural commodity;

(3) To provide for improving standards and grades by defining, establishing and providing labeling requirements with respect to the same;

(4) To investigate and take necessary action to prevent unfair trade practices. [1961 c 11 § 15.66.030. Prior: 1955 c 191 § 3.]

15.66.040 Prerequisites to marketing orders—Director's duties. Marketing orders and orders modifying or terminating existing marketing orders shall be promulgated by the director only after the director has done the following:

(1) Received a petition as provided for in RCW 15.66.050;

(2) Given notice of hearing as provided for in RCW 15.66.060;

(3) Conducted a hearing as provided for in RCW 15.66.070;

(4) Made findings and decision as provided for in RCW 15.66.080;

(5) Determined assent of affected producers as provided for in RCW 15.66.090. [1961 c 11 § 15.66.040. Prior: 1955 c 191 § 4.]

15.66.050 Petition for marketing order—Fee. Petitions for issuance, amendment or termination of a marketing order shall be signed by not less than five percent or one hundred of the producers alleged to be affected, whichever is less, and shall be filed with the director. Such petition shall be accompanied by a filing fee of one hundred dollars payable to the state treasurer; and shall designate some person as attorney-in-fact for the purpose of this section. Upon receipt of such a petition, the director shall prepare a budget estimate for handling such petition which shall include the cost of the preparation of the estimate, the cost of the hearings and the cost of the proposed referendum. The petitioners, within thirty days after receipt of the budget estimate by

their attorney-in-fact shall remit to the director the difference between the filing fee of one hundred dollars already paid and the total budget estimate. If the petitioners fail to remit the difference, or if for any other reason the proceedings for the issuance, amendment or termination of the marketing order are discontinued, the filing fee, including any additional amount paid in accordance with such budget estimates shall not be refunded. If the petition results, after proper proceedings, in the issuance, amendment, or termination of a marketing order, said petitioners shall be reimbursed for the amount paid for said total filing fee out of funds of the commodity commission as they become available. [1961 c 11 § 15.66.050. Prior: 1955 c 191 § 5.]

15.66.060 Lists of affected producers—Notice—Hearing notice. Upon receipt of a petition for the issuance, amendment, or termination of a marketing order, the director shall establish a list of producers of the agricultural commodity affected or make any such existing list current. In establishing or making current such a list of producers and their individual production, the director shall publish a notice to producers of the commodity to be affected requiring them to file with the director a report showing the producer's name, mailing address, and the yearly average quantity of the affected commodity produced by him in the three years preceding the date of the notice or in such lesser time as the producer has produced the commodity in question. Such information as to production may also be accepted from other valid sources if readily available. The notice shall be published once a week for four consecutive weeks in such newspaper or newspapers, including a newspaper or newspapers of general circulation within the affected areas, as the director may prescribe, and shall be mailed to all affected producers on record with the director. All reports shall be filed with the director within twenty days from the last date of publication of the notice or within thirty days after the mailing of the notice to affected producers, whichever is the later. The director shall keep such lists at all times as current as possible and may require information from affected producers at various times in accordance with rules and regulations prescribed by the director: *Provided*, That any commission established under the provisions of this chapter may at its discretion prior to any election for any purpose by such commission carry out the above stated mandate to the director for establishing a list of producers and their individual production, and supply the director with a current list of all producers subject to the provisions of the marketing order under which it was formed.

Such producer list shall be final and conclusive in making determinations relative to the assent by producers upon the issuance, amendment or termination of a marketing order and in elections under the provisions of this chapter.

The director shall then notify affected producers, so listed, by mail that the public hearing affording opportunity for them to be heard upon the proposed issuance, amendment, or termination of the marketing order will be heard at the time and place stated in the notice. Such

notice of the hearing shall be given not less than ten days nor more than sixty days prior to the hearing. [1975 1st ex.s. c 7 § 7; 1969 c 66 § 1; 1961 c 11 § 15.66.060. Prior: 1955 c 191 § 6.]

15.66.070 Public hearing. At the public hearing the director shall receive evidence and testimony offered in support of, or opposition to, the proposed issuance of, amendment to, or termination of a marketing order and concerning the terms, conditions, scope, and area thereof. Such hearing shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearings shall be made and maintained on file in the office of the director, which file shall be open to public inspection. The director shall base his findings upon the testimony and evidence received at the hearing, together with any other relevant facts available to him from official publications of institutions of recognized standing. The director shall describe in his findings such official publications upon which any finding is based.

For such hearings and for any other hearings under this chapter, the director shall have the power to subpoena witnesses and to issue subpoenas for the production of any books, records or documents of any kind.

The superior court of the county in which any hearing or proceeding may be had may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. The director, in case of the refusal of any witness to attest or testify or produce any papers required by the subpoena, shall report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice has been given of the time and place of attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that he has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the subpoena, or has refused to answer questions propounded to him in the course of such hearing, cause or proceeding, and shall ask an order of the court to compel a witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued, it shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be dealt with as for contempt of court. [1961 c 11 § 15.66.070. Prior: 1955 c 191 § 7.]

15.66.080 Findings and decision of the director. The director shall make and publish findings upon every material point controverted at the hearing and required by this chapter and upon such other matters and things as he may deem fitting and proper. He shall also issue a

recommended decision based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record. The recommended decision shall contain the text in full of any order, or amendment or termination of existing order, and may deny or approve the proposal in its entirety, or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal: *Provided*, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The director shall not approve the issuance, amendment, or termination of any marketing order unless he shall find with respect thereto:

(1) That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objective sought in such marketing order;

(2) That the proposed issuance, amendment, or termination is in conformity with the provisions of this chapter and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this chapter;

(3) That the interests of consumers of such commodity are protected in that the powers of this chapter are being exercised only to the extent necessary to attain such objectives.

After the issuance of a recommended decision all interested parties shall have a period of not less than ten days to file objections with the director. The director shall consider the objections and shall issue his final decision which may be the same as the recommended decision or may be revised in the light of said objections. The final decision shall set out in full the text of the order. The director shall deliver or mail copies of the final decision to the same parties to whom copies of the findings and recommended decision are required to be sent. If the final decision denies the proposal in its entirety, no further action shall be taken by the director. [1961 c 11 § 15.66.080. Prior: 1955 c 191 § 8.]

15.66.090 Determined assent of affected producers. After the issuance by the director of the final decision approving the issuance, amendment, or termination of a marketing order, the director shall determine by a referendum whether the affected producers assent to the proposed action or not. The director shall conduct the referendum among the affected producers based on the list as provided for in RCW 15.66.060, and the affected producers shall be deemed to have assented to the proposed issuance or termination order if fifty-one percent or more by number reply to the referendum within the time specified by the director, and if, of those replying, sixty-five percent or more by number and fifty-one percent or more by volume assent to the proposed order. The producers shall be deemed to have assented to the proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent to the proposed order. The determination

by volume shall be made on the basis of volume as determined in the list of affected producers created under provisions of RCW 15.66.060, subject to rules and regulations of the director for such determination. The director shall consider the approval or disapproval of any cooperative marketing association authorized by its producer members to act for them in any such referendum, as being the approval or disapproval of the producers who are members of or stockholders in or under contract with such association of cooperative producers: *Provided*, That the association shall first determine that a majority of the membership of the association authorize its action concerning the specific marketing order. If the requisite assent is given, the director shall promulgate the order and shall mail notices of the same to all affected producers. [1975 1st ex.s. c 7 § 8; 1961 c 11 § 15.66.090. Prior: 1955 c 191 § 9.]

15.66.100 Contents of marketing order. A marketing order shall define the area of the state to be covered by the order which may be all or any portion of the state; shall contain provisions for establishment of a commodity commission and administration and operation and powers and duties of same; shall provide for assessments as provided for in this chapter and shall contain one or more of the provisions as set forth in RCW 15.66.030. The order may provide that its provisions covering standards, grades, labels and trade practices apply with respect to the affected commodity marketed or sold within such area regardless of where produced. A marketing order may provide that one commodity commission may administer marketing orders for two or more affected commodities, if approved by a majority, as provided in this chapter for the creation of a marketing order, of the affected producers of each affected commodity concerned. [1961 c 11 § 15.66.100. Prior: 1955 c 191 § 10.]

15.66.110 Commodity commission—Composition—Terms. Every marketing order shall establish a commodity commission composed of not less than five nor more than thirteen members. In addition, the director shall be an ex officio member of each commodity commission. Commission members shall be citizens and residents of this state, over the age of twenty-five years. The term of office of commission members shall be three years with the terms rotating so that one-third of the terms will commence as nearly as practicable each year. However, the first commission shall be selected, one-third for a term of one year, one-third for a term of two years, and one-third for a term of three years, as nearly as practicable. Two-thirds of the commission members shall be elected by the affected producers and such elected members shall all be affected producers. The remaining one-third shall be appointed by the commission and shall be either affected producers, others active in matters relating to the affected commodity or persons not so related. [1961 c 11 § 15.66.110. Prior: 1955 c 191 § 11.]

15.66.120 Commodity commission—Nominations—Elections—Vacancies. Not less than ninety

days nor more than one hundred and five days prior to the beginning of each term of each elected commission member, the director shall give notice by mail to all affected producers of the vacancy and call for nominations in accordance with this section and with the provisions of the marketing order and shall give notice of the final date for filing nominations, which shall not be less than eighty days nor more than eighty-five days before the beginning of such term. Such notice shall also advise that nominating petitions shall be signed by five persons qualified to vote for such candidates or, if the number of nominating signers is provided for in the marketing order, such number as such order provides.

Not less than sixty days nor more than seventy-five days prior to the commencement of such commission member term, the director shall submit by mail ballots to all affected producers, which ballots shall be required to be returned to the director not less than thirty days prior to the commencement of such term. Such mail ballot shall be conducted in a manner so that it shall be a secret ballot. With respect to the first commission for a particular commodity, the director may call for nominations in the notice of his decision following the hearing and the ballot may be submitted at the time the director's proposed order is submitted to the affected producers for their assent.

Said elected members may be elected from various districts within the area covered by the marketing order if the order so provides, with the number of members from each district to be in accordance with the provisions of the marketing order.

The members of the commission not elected by the affected producers shall be elected by a majority of the commission at a meeting of the commission within ninety days prior to expiration of the term but to fill nonelective vacancies caused by other reasons than the expiration of a term, the new member shall be elected by the commission at its first meeting after the occurrence of the vacancy.

When only one nominee is nominated for any position on the commission, the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected. [1975 1st ex.s. c 7 § 9; 1961 c 11 § 15.66.120. Prior: 1955 c 191 § 12.]

15.66.130 Commodity commission—Meetings—Quorum—Compensation. Each commodity commission shall hold such regular meetings as the marketing order may prescribe or that the commission by resolution may prescribe, together with such special meetings that may be called in accordance with provisions of its resolutions upon reasonable notice to all members thereof. A majority of the members shall constitute a quorum for the transaction of all business of the commission. In the event of a vacancy in an elected or appointed position on the commission, the remaining elected members of the commission shall select a qualified person to fill the unexpired term.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 17; 1975-'76 2nd ex.s. c 34 § 20; 1975 1st ex.s. c 7 § 10; 1972 ex.s. c 112 § 3; 1961 c 11 § 15.66.130. Prior: 1955 c 191 § 13.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.66.140 Commodity commission—Powers and duties. Every marketing commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chairman and such other officers as determined advisable;

(2) To adopt, rescind and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) Such other powers and duties that are necessary to carry out the purposes of this chapter. [1985 c 261 § 20; 1982 c 81 § 2; 1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

15.66.145 Members may belong to association with same objectives—Contracts with associations authorized. Any member of an agricultural commission may also be a member or officer of an association which has the same objectives for which the agricultural commission was formed. An agricultural commission may also contract with such association for services necessary to carry out any purposes authorized under this chapter,

provided that an appropriate contract has been entered into. [1972 ex.s. c 112 § 4.]

15.66.150 Annual assessments—Rate—Collection. There is hereby levied, and there shall be collected by each commission, upon each and every unit of any agricultural commodity specified in any marketing order an annual assessment which shall be paid by the producer thereof upon each and every such unit sold, processed, stored or delivered for sale, processing or storage by him. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the net unit price at the time of sale. The total amount of such annual assessment to be paid by all affected producers of such commodity shall not exceed three percent of the total market value of all affected units sold, processed, stored or delivered for sale, processing or storage by all affected producers of such units during the year to which the assessment applies.

Every marketing order shall prescribe the per unit or percentage rate of such assessment. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited and may be altered from time to time by amendment of such order. In every such marketing order and amendment the determination of such rate shall be based upon the volume and price of sales of affected units during a period which the director determines to be a representative period. The per unit or percentage rate of assessment prescribed in any such order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such order is amended as to such rate. However, at the end of any year, any affected producer may obtain a refund from the commission of any assessment payments made which exceed three percent of the total market value of all of the affected commodity sold, processed, stored or delivered for sale, processing or storage by such producer during the year. Such refund shall be made only upon satisfactory proof given by such producer in accordance with reasonable rules and regulations prescribed by the director. Such market value shall be based upon the average sales price received by such producer during the year from all his bona fide sales or, if such producer did not sell twenty-five percent or more of all of the affected commodity produced by him during the year, such market value shall be determined by the director upon other sales of the affected commodity determined by the director to be representative and comparable.

To collect such assessment each order may require:

(1) Stamps to be purchased from the affected commodity commission or other authority stated in such order and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon).

(2) Payment of producer assessments before the affected units are shipped off the farm or payment of assessments at different or later times, and in such event

the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(3) Every affected producer subject to assessment under such order to deposit with the commission in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed twenty-five percent of the estimated total annual assessment payable by such person. At the close of such marketing year the sums so deposited shall be adjusted to the total of such assessments payable by such person.

(4) Handlers receiving the affected commodity from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and remit the same to the affected commission. The lending agency for a commodity credit corporation loan to producers shall be deemed a handler for the purpose of this subsection. No affected units shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. [1981 c 297 § 40; 1979 ex.s. c 93 § 1; 1961 c 11 § 15.66.150. Prior: 1957 c 133 § 1; 1955 c 191 § 15.]

Severability—1981 c 297: See note following RCW 15.36.110.

15.66.160 Annual assessments—Disposition of revenue. Moneys collected by any commodity commission pursuant to any marketing order from any assessment for marketing purposes or as an advance deposit thereon shall be used by the commission only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of such agreement or order.

Upon the termination of any marketing order any and all moneys remaining with the commodity commission operating under that marketing order and not required to defray expenses or repay obligations incurred by that commission shall be returned to the affected producers in proportion to the assessments paid by each in the two year period preceding the date of the termination order. [1961 c 11 § 15.66.160. Prior: 1955 c 191 § 16.]

15.66.170 Annual assessments—Payments—Civil action to enforce. Any due and payable assessment herein levied, and every sum due under any marketing order in a specified amount shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the commission when payment is called for by the commission. In the event any person fails to pay the full amount of such assessment or such other sum on or before the date due, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of

the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1961 c 11 § 15.66.170. Prior: 1955 c 191 § 17.]

15.66.180 Expenditure of funds collected. All moneys which are collected or otherwise received pursuant to each marketing order created under this chapter shall be used solely by and for the commodity commission concerned and shall not be used for any other commission nor the department. Such moneys shall be deposited in a separate account or accounts in the name of the individual commission in any bank which is a state depository. All expenses and disbursements incurred and made pursuant to the provisions of any marketing order shall be paid from moneys collected and received pursuant to such order without the necessity of a specific legislative appropriation and all moneys deposited for the account of any order shall be paid from said account by check or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the commission. None of the provisions of RCW 43.01.050 shall be applicable to any such account or any moneys so received, collected or expended. [1961 c 11 § 15.66.180. Prior: 1955 c 191 § 18.]

15.66.190 Official bonds required. Every administrator, employee or other person occupying a position of trust under any marketing order and every member actually handling or drawing upon funds shall give a bond in such penal amount as may be required by the affected commission or by the order, the premium for which bond or bonds shall be paid by the commission. [1961 c 11 § 15.66.190. Prior: 1955 c 191 § 19.]

15.66.200 Petition for modification or exemption—Hearing—Appeal from ruling. An affected producer subject to a marketing order may file a written petition with the director stating that the order, agreement or program or any part thereof is not in accordance with the law, and requesting a modification thereof or exemption therefrom. He shall thereupon be given a hearing, which hearing shall be conducted in the manner provided by RCW 15.66.070, and thereafter the director shall make his ruling which shall be final.

Appeal from any ruling of the director may be taken to the superior court of the county in which the petitioner resides or has his principal place of business, by serving upon the director a copy of the notice of appeal and complaint within twenty days from the date of entry of the ruling. Upon such application the court may proceed in accordance with RCW 7.16.010 through 7.16.140. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the director with directions to make such ruling as the

court determines to be in accordance with law or to take such further proceedings as in its opinion are required by this chapter. [1961 c 11 § 15.66.200. Prior: 1955 c 191 § 20.]

15.66.210 Unlawful acts—Penalties—Injunctions—Investigations. It shall be a misdemeanor for:

(1) Any person wilfully to violate any provision of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter.

(2) Any person wilfully to render or furnish a false or fraudulent report, statement of record required by the director or any commission pursuant to the provisions of this chapter or any provision of any marketing order duly issued by the director pursuant to this chapter or wilfully to fail or refuse to furnish or render any such report, statement or record so required.

In the event of violation or threatened violation of any provision of this chapter or of any marketing order duly issued or entered into pursuant to this chapter, the director, the affected commission, or any affected producer on joining the affected commission, shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a temporary restraining order and injunction pending litigation upon filing a verified complaint and sufficient bond.

All persons subject to any order shall severally from time to time, upon the request of the director, furnish him with such information as he finds to be necessary to enable him to effectuate the policies of this chapter and the purposes of such order or to ascertain and determine the extent to which such order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemptions from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director. For the purpose of ascertaining the correctness of any report made to the director pursuant to this section or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the director is authorized to examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents or memoranda as he deems relevant and which are within the control of any such person from whom such report was requested, or of any person having, either directly or indirectly, actual or legal control of or over such person or such records, or of any subsidiary of any such person. To carry out the purposes of this section the director, upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind, and RCW 15.66.070 shall apply with respect to any such hearing, together with such other regulations consistent therewith as the director may from time to time prescribe. [1961 c 11 § 15.66.210. Prior: 1955 c 191 § 21.]

15.66.220 Compliance with chapter a defense in any action. In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this chapter or a marketing order issued under this chapter, and in furtherance of the purposes and provisions of this chapter, shall be a complete defense to such action or proceeding. [1961 c 11 § 15.66.220. Prior: 1955 c 191 § 22.]

15.66.230 Liability of commission, state, etc. Obligations incurred by any commission and any other liabilities or claims against the commission shall be enforced only against the assets of such commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to this chapter or the assets thereof or against any member officer, employee or agent of the board in his individual capacity. The members of any such commission, including employees of such board, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of any such commission. The liability of the members of such commission shall be several and not joint and no member shall be liable for the default of any other member. [1961 c 11 § 15.66.230. Prior: 1955 c 191 § 23.]

15.66.240 Marketing agreements. Marketing agreements shall be created upon written application filed with the director by not less than five commercial producers of an agricultural commodity and upon approval of the director. The director shall hold a public hearing upon such application. Not less than five days prior thereto he shall give written notice thereof to all producers whom he determines may be proper parties to such agreement and shall publish such notice at least once in a newspaper of general circulation in the affected area. The director shall approve an agreement so applied for only if he shall find:

(1) That no other agreement or order is in force for the same commodity in the same area or any part thereof;

(2) That such agreement will tend to effectuate its purpose and the declared policies of this chapter and conforms to law;

(3) That enough persons who produce a sufficient amount of the affected commodity to tend to effectuate said policies and purposes and to provide sufficient moneys to defray the necessary expenses of formulation, issuance, administration and enforcement have agreed in writing to said agreement.

Such agreement may be for any of the purposes and may contain any of the provisions that a marketing order may contain under the provisions of this chapter but no other purposes and provisions. A commodity commission created by such agreement shall in all respects have all powers and duties as a commodity commission created by a marketing order. Such agreement shall be binding upon, and only upon, persons who have signed the agreement: *Provided*, That a cooperative association may, in behalf of its members, execute any and all marketing agreements authorized hereunder, and upon so doing, such agreement so executed shall be binding upon said cooperative association and its members. Such agreements shall go into force when the director endorses his approval in writing upon the agreement and so notifies all who have signed the agreement. Additional signatories may be added at any time with the approval of the director. Every agreement shall remain in force and be binding upon all persons so agreeing for the period specified in such agreement but the agreement shall provide a time at least once in every twelve months when any or all such persons may withdraw upon giving notice as provided in the agreement. Such an agreement may be amended or terminated in the same manner as herein provided for its creation and may also be terminated whenever after the withdrawal of any signatory the director finds on the basis of evidence presented at such hearing that not enough persons remain signatory to such agreement to effectuate the purposes of the agreement or the policies of the act or to provide sufficient moneys to defray necessary expenses. However, in the event that a cooperative association is signatory to the marketing agreement in behalf of its members, the action of the cooperative association shall be considered the action of its members for the purpose of determining withdrawal or termination. [1961 c 11 § 15.66.240. Prior: 1955 c 191 § 24.]

15.66.250 Price fixing and product limiting prohibited. Nothing contained in this chapter shall permit fixing of prices not otherwise permitted by law or any limitation on production and no marketing order or agreement or any rule or regulation thereunder shall contain any such provisions. [1961 c 11 § 15.66.250. Prior: 1955 c 191 § 25.]

15.66.260 Administrative expenses. All general administrative expenses of the director in carrying out the provisions of this chapter shall be borne by the state: *Provided*, That the department shall be reimbursed for actual costs incurred in conducting nominations and elections for members of any commodity board established under the provisions of this chapter. Such reimbursement shall be made from the funds of the commission for which the nominations and elections were conducted by the director. [1969 c 66 § 2; 1961 c 11 § 15.66.260. Prior: 1955 c 191 § 26.]

15.66.270 Exemptions. Nothing in this chapter contained shall apply to:

(1) Any order, rule, or regulation issued or issuable by the Washington utilities and transportation commission or the interstate commerce commission with respect to the operation of common carriers;

(2) Any provision of the statutes of the state of Washington relating to the apple advertising commission (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW) or to the dairy products commission (chapter 15.44 RCW). No marketing agreement or order shall be issued with respect to apples, soft tree fruits or dairy products for the purposes specified in RCW 15.66.030(1) or 15.66.030(2). [1961 c 11 § 15.66.270. Prior: 1955 c 191 § 27.]

15.66.275 Applicability of chapter to state agencies or other governmental units. The provisions of this chapter and any marketing order established thereunder shall be applicable to any state agency or other governmental unit engaged in the production for sale of any agricultural commodity subject to such marketing order, especially those relating to RCW 15.66.150 concerning assessments. Such assessments shall be paid by the state agency or governmental agency made subject to the marketing order from the proceeds derived from the sale of said agricultural commodities. [1967 ex.s. c 55 § 1.]

15.66.280 Restrictive provisions of chapter 43.78 RCW not applicable to promotional printing and literature of commissions. The restrictive provisions of chapter 43.78 RCW as now or hereafter amended shall not apply to promotional printing and literature for any commission formed under this chapter. [1972 ex.s. c 112 § 5.]

15.66.900 Short title. This chapter shall be known and may be cited as the "Washington Agricultural Enabling Act." [1961 c 11 § 15.66.900. Prior: 1955 c 191 § 29.]

Chapter 15.69

CONSERVATION—NORTHWEST WASHINGTON NURSERY

Sections

15.69.010	Agreements for soil conservation and land use authorized.
15.69.020	Northwest nursery fund.
15.69.030	Northwest nursery fund—Depository.
15.69.040	Northwest nursery fund—Expenditures.

15.69.010 Agreements for soil conservation and land use authorized. The director of agriculture is hereby authorized to enter into agreements with local, state and federal agencies, agencies of other states and associations of agricultural producers, such as, but not limited to the crop improvement association, for the growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture on such property or properties known as the northwest Washington nursery located near Bellingham, Washington. Such agreements

shall provide for payment of reasonable fees to cover the cost of such growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture. [1961 c 11 § 15.69.010. Prior: 1955 c 368 § 1.]

15.69.020 Northwest nursery fund. There is created a fund to be known as the northwest nursery fund into which shall be paid all moneys received as payment to cover the costs of production for growing and/or testing plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture in this state and such other money as shall be received from services rendered on such premises not otherwise provided for by law. None of the provisions of RCW 43.01.050 shall be applicable to the northwest nursery fund, nor to any of the moneys received and collected. [1961 c 11 § 15.69.020. Prior: 1955 c 368 § 2.]

15.69.030 Northwest nursery fund—Depository. The northwest nursery fund shall be deposited by the director in such banks and financial institutions as may be selected which shall give to the director surety bonds executed by surety companies authorized to do business in this state, or collateral eligible as security for deposit of state funds, in at least the full amount of the deposit in each such bank or financial institution.

All moneys received by the director or any employee, shall be deposited each day, and as often during the day as advisable, in the authorized depository selected by the director under the terms of this section. [1961 c 11 § 15.69.030. Prior: 1955 c 368 § 3.]

15.69.040 Northwest nursery fund—Expenditures. Moneys in the northwest nursery fund shall be expended by the director for defraying expenses of carrying out the agreements for the growing and/or testing of plant materials and other types of plant vegetation having value for soil conservation and proper land use for agriculture and necessary expenses of operation and administration. [1961 c 11 § 15.69.040. Prior: 1955 c 368 § 4.]

Chapter 15.70

RURAL REHABILITATION

Sections

15.70.010	Director may receive federal funds for rural rehabilitation corporation.
15.70.020	Director may delegate certain powers to secretary of agriculture.
15.70.030	Deposit and use of funds.
15.70.040	Powers of director—In general.
15.70.050	No liability as to United States.

15.70.010 Director may receive federal funds for rural rehabilitation corporation. The director of the state department of agriculture is hereby designated as the state official of the state of Washington to make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of public law 499,

81st congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the Washington rural rehabilitation corporation. [1961 c 11 § 15.70.010. Prior: 1951 c 169 § 1.]

15.70.020 Director may delegate certain powers to secretary of agriculture. The director of agriculture is authorized, in his discretion, to enter into agreements with the secretary of agriculture of the United States pursuant to section 2(f) of the aforesaid act of the congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend and use in the state of Washington all or any part of such trust assets or any other funds of the state of Washington which may be appropriated for such uses for carrying out the purposes of titles I and II of the Bankhead-Jones farm tenant act, in accordance with the applicable provisions of title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements. [1961 c 11 § 15.70.020. Prior: 1951 c 169 § 2.]

15.70.030 Deposit and use of funds. Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under the provisions of RCW 15.70.020 shall be received by the director of agriculture and by him deposited with the treasurer of the state. Such funds are hereby appropriated and may be expended or obligated by the director of agriculture for the purposes of RCW 15.70.020 or for use by the director of agriculture for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Washington rural rehabilitation corporation as may from time to time be agreed upon by the director of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said public law 499. [1961 c 11 § 15.70.030. Prior: 1951 c 169 § 3.]

15.70.040 Powers of director—In general. The director of agriculture is authorized and empowered to:

(1) Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract or agreement entered into or administered pursuant to this chapter and if, in his judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

(2) Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which the director of agriculture has a lien by reason of judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the director of agriculture under this chapter, and

(3) Accept title to any property so purchased or acquired; to operate or lease such property for such period

as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

The authority herein contained may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to RCW 15.70.020. [1961 c 11 § 15.70.040. Prior: 1951 c 169 § 4.]

15.70.050 No liability as to United States. The United States and the secretary of agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the director of agriculture of the state of Washington pursuant to this chapter. [1961 c 11 § 15.70.050. Prior: 1951 c 169 § 5.]

Chapter 15.76

AGRICULTURAL FAIRS, YOUTH SHOWS, EXHIBITIONS

Sections

15.76.100	Declaration of public interest—Allocation of state funds authorized.
15.76.110	Definitions.
15.76.120	Classification of fairs.
15.76.130	Application for state allocation—Purposes—Form.
15.76.140	Eligibility requirements for state allocation.
15.76.150	Allocation formula—Considerations.
15.76.160	Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form.
15.76.165	Application of counties for capital improvement and maintenance assistance—Exemption of leased property from property taxation.
15.76.170	Fairs commission—Creation, terms, compensation, powers and duties.
15.76.180	Rules and regulations.

County fairs: Chapter 36.37 RCW.

County property, lease for agricultural purposes: RCW 36.34.145.

15.76.100 Declaration of public interest—Allocation of state funds authorized. It is hereby declared that it is in the public interest to hold agricultural fairs, including the exhibition of livestock and agricultural produce of all kinds, as well as related arts and manufactures; including products of the farm home and educational contest, displays and demonstrations designed to train youth and to promote the welfare of farm people and rural living. Fairs qualifying hereunder shall be eligible for allocations from the state fair fund as provided in this chapter. [1961 c 61 § 1.]

15.76.110 Definitions. "Director" shall mean the director of agriculture. "Commission" shall mean the fairs commission created by this chapter. "State allocations" shall mean allocations from the state fair fund. [1961 c 61 § 2.]

15.76.120 Classification of fairs. For the purposes of this chapter all agricultural fairs in the state which may

become eligible for state allocations shall be divided into categories, to wit:

(1) "Area fairs"—those not under the jurisdiction of boards of county commissioners; organized to serve an area larger than one county, having both open and junior participation, and having an extensive diversification of classes, displays and exhibits;

(2) "County and district fairs"—organized to serve the interests of single counties other than those in which a recognized area fair or a district fair as defined in RCW 36.37.050, is held and which are under the direct control and supervision of the county commissioners of the respective counties, which have both open and junior participation, but whose classes, displays and exhibits may be more restricted or limited than in the case of area or district fairs. There may be but one county fair in a single county: *Provided, however,* That the county commissioners of two or more counties may, by resolution, jointly sponsor a county fair.

(3) "Community fairs"—organized primarily to serve a smaller area than an area or county fair, which may have open or junior classes, displays, or exhibits. There may be more than one community fair in a county.

(4) "Youth shows and fairs"—approved by duly constituted agents of Washington State University and/or the Washington state board for vocational education, serving three or more counties, and having for their purpose the education and training of rural youth in matters of rural living. [1961 c 61 § 3.]

15.76.130 Application for state allocation—Purposes—Form. For the purpose of encouraging agricultural fairs and training rural youth, the board of trustees of any fair or youth show may apply to the director of agriculture for state allocations as hereinafter set forth. Such application shall be in such form as the director may prescribe. [1961 c 61 § 4.]

15.76.140 Eligibility requirements for state allocation. Before any agricultural fair may become eligible for state allocations it must have conducted two successful consecutive annual fairs immediately preceding application for such allocations, and have its application therefor approved by the director. [1965 ex.s. c 32 § 1; 1961 c 61 § 5.]

15.76.150 Allocation formula—Considerations. The director shall have the authority to make allocations from the state fair fund as follows: Eighty-five percent to participating agricultural fairs, distributed according to the merit of such fairs measured by a merit rating to be set up by the director. This merit rating shall take into account such factors as area and population served, open and/or youth participation, attendance, gate receipts, number and type of exhibits, premiums and prizes paid, community support, evidence of successful achievement of the aims and purposes of the fair, extent of improvements made to grounds and facilities from year to year, and overall condition and appearance of grounds and facilities. The remaining fifteen percent of

money in the state fair fund may be used for special assistance to any participating fair or fairs and for administrative expenses incurred in the administration of this chapter, including expenses incurred by the commission as may be approved by the director: *Provided,* That not more than five percent of the state fair fund may be used for such expenses.

The division and payment of funds authorized in this section shall occur at such times as the director may prescribe. [1965 ex.s. c 32 § 2; 1961 c 61 § 6.]

15.76.160 Purposes for which allocation made—To whom made—List of premiums to be submitted as part of application, form. Any state allocations made under this chapter to fairs or youth shows, other than fairs or youth shows operated by or for and under the control of one or more counties or other agencies, as defined in subsection (4) of RCW 15.76.120, shall be made only as a reimbursement in whole or in part for the payment of premiums and prizes awarded to participants in such fairs or youth shows. State allocations to fairs under the control of one or more counties shall be made to the county treasurer of the county in which the fair is held. State allocations to other publicly sponsored fairs or youth shows shall be made to such sponsor. The board of trustees of any private fair or youth show, as part of its application for any allocation under this chapter, and as a condition of such allocation, shall submit to the director a list of premiums and prizes awarded to participants in its last preceding fair or youth show. Such list shall contain the names of all premium and prize winners, a description of each prize or premium, including its amount or value, and the total values of all such awards. The list shall be in such form and contain such further information as the director may require, and shall be verified as to its accuracy by the oath of the president of the fair or youth show, together with that of the secretary or manager, subscribed thereon. [1961 c 61 § 7.]

15.76.165 Application of counties for capital improvement and maintenance assistance—Exemption of leased property from property taxation. Any county which owns or leases property from another governmental agency and provides such property for area or county and district agricultural fair purposes may apply to the director for special assistance in carrying out necessary capital improvements to such property and maintenance of the appurtenances thereto, and in the event such property and capital improvements are leased to any organization conducting an agricultural fair pursuant to chapter 15.76 RCW and chapter 257 of the Laws of 1955, such leasehold and such leased property shall be exempt from real and personal property taxation. [1973 c 117 § 1; 1969 c 85 § 1.]

15.76.170 Fairs commission—Creation, terms, compensation, powers and duties. There is hereby created a fairs commission to consist of the director of agriculture as ex officio member and chairman, and seven members appointed by the director to be persons who

are interested in fair activities; at least three of whom shall be from the east side of the Cascades and three from the west side of the Cascades and one member at large. The first appointment shall be: Three for a one year term, two for a two year term, and two for a three year term, and thereafter the appointments shall be for three year terms.

Appointed members of the commission shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses, in accordance with RCW 43.03.050 and 43.03.060 payable on proper vouchers submitted to and approved by the director, and payable from that portion of the state fair fund set aside for administrative costs under this chapter. The commission shall meet at the call of the chairman, but at least annually. It shall be the duty of the commission to act as an advisory committee to the director, to assist in the preparation of the merit rating used in determining allocations to be made to fairs, and to perform such other duties as may be required by the director from time to time. [1984 c 287 § 18; 1975-'76 2nd ex.s. c 34 § 21; 1975 1st ex.s. c 7 § 11; 1961 c 61 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

15.76.180 Rules and regulations. The director shall have the power to adopt such rules and regulations as may be necessary or appropriate to carry out the purposes of this chapter. [1961 c 61 § 9.]

Chapter 15.80 WEIGHMASTERS

Sections

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15.80.300 Definitions—Application. Terms used in this chapter shall have the meaning given to them in RCW 15.80.310 through 15.80.400 unless the context where used shall clearly indicate to the contrary. [1969 ex.s. c 100 § 1.]

15.80.310 "Department". "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 100 § 2.]

15.80.320 "Director". "Director" means the director of the department or his duly appointed representative. [1969 ex.s. c 100 § 3.]

15.80.330 "Person". "Person" means a natural person, individual, or firm, partnership, corporation, company, society, or association. This term shall import either the singular or plural, as the case may be. [1969 ex.s. c 100 § 4.]

15.80.340 "Licensed public weighmaster". "Licensed public weighmaster" also referred to as weighmaster, means any person, licensed under the provisions of this chapter, who weighs, measures or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure or count accepted as the accurate weight, or count upon which the purchase or sale of any commodity or upon which the basic charge or payment for services rendered is based. [1969 ex.s. c 100 § 5.]

15.80.350 "Weigher". "Weigher" means any person who is licensed under the provisions of this chapter and who is an agent or employee of a weighmaster and authorized by the weighmaster to issue certified statements of weight, measure or count. [1969 ex.s. c 100 § 6.]

15.80.360 "Vehicle". "Vehicle" means any device, other than a railroad car, in, upon, or by which any

commodity, is or may be transported or drawn. [1969 ex.s. c 100 § 7.]

15.80.370 "Certified weight". "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a weighmaster or weigher in accordance with the provisions of this chapter or any regulation adopted thereunder. [1969 ex.s. c 100 § 8.]

15.80.380 "Commodity". "Commodity" means anything that may be weighed, measured or counted in a commercial transaction. [1969 ex.s. c 100 § 9.]

15.80.390 "Thing". "Thing" means anything used to move, handle, transport or contain any commodity for which a certified weight, measure or count is issued when such thing is used to handle, transport, or contain a commodity. [1969 ex.s. c 100 § 10.]

15.80.400 "Retail merchant". "Retail merchant" means and includes any person operating from a bona fide fixed or permanent location at which place all of the retail business of said merchant is transacted, and whose business is exclusively retail except for the occasional wholesaling of small quantities of surplus commodities which have been taken in exchange for merchandise from the producers thereof at the bona fide fixed or permanent location. [1969 ex.s. c 100 § 11.]

15.80.410 Director's duty to enforce—Adoption of rules. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose. The adoption of rules shall be subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended, concerning the adoption of rules. [1969 ex.s. c 100 § 12.]

15.80.420 Highway transport of commodities sold by weight—Weighing required—Exceptions. It shall be a violation of this chapter to transport by highway any hay, straw or grain which has been purchased by weight or will be purchased by weight, unless it is weighed and a certified weight ticket is issued thereon, by the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay, straw or grain is to be unloaded: *Provided, however,* That this section shall not apply to the following:

(1) The transportation of, or sale of, hay, straw or grain by the primary producer thereof;

(2) The transportation of hay, straw or grain by an agriculturalist for use in his own growing, or animal or poultry husbandry endeavors;

(3) The transportation of grain by a party who is either a warehouseman or grain dealer and who is licensed under the grain warehouse laws and who makes such shipment in the course of the business for which he is so licensed;

(4) The transportation of hay, straw or grain by retail merchants, except for the provisions of RCW 15.80.430 and 15.80.440;

(5) The transportation of grain from a warehouse licensed under the grain warehouse laws when the transported grain is consigned directly to a public terminal warehouse. [1969 ex.s. c 100 § 13.]

15.80.430 Certificates of weight and invoices to be carried with loads. Certificates of weight issued by licensed public weighmasters and invoices for sales by a retail merchant, if the commodity is being hauled by or for such retail merchant, shall be carried with all loads of hay, straw or grain when in transit. [1969 ex.s. c 100 § 14.]

15.80.440 Reweighing—Weighing—Variance from invoiced weight. The driver of any vehicle previously weighed by a licensed public weighmaster may be required to reweigh the vehicle and load at the nearest scale.

The driver of any vehicle operated by or for a retail merchant which vehicle contains hay, straw, or grain may be required to weigh the vehicle and load at the nearest scale, and if the weight is found to be less than the amount appearing on the invoice, a copy of which is required to be carried on the vehicle, the director shall report the finding to the consignee and may cause such retail merchant to be prosecuted in accordance with the provisions of this chapter. [1969 ex.s. c 100 § 15.]

15.80.450 Weighmaster's license—Applications—Fee—Bond. Any person may apply to the director for a weighmaster's license. Such application shall be on a form prescribed by the director and shall include:

(1) The full name of the person applying for such license and if the applicant is a partnership, association or corporation, the full name of each member of the partnership or the names of the officers of the association or corporation;

(2) The principal business address of the applicant in this state and elsewhere;

(3) The names of the persons authorized to receive and accept service of summons and legal notice of all kinds for the applicant;

(4) The location of any scale or scales subject to the applicant's control and from which certified weights will be issued; and

(5) Such other information as the director feels necessary to carry out the purposes of this chapter.

Such annual application shall be accompanied by a license fee of twenty dollars for each scale from which certified weights will be issued and a bond as provided for in RCW 15.80.480. [1969 ex.s. c 100 § 16.]

15.80.460 Weighmaster's license—Issuance—Expiration date. The director shall issue a license to an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and the rules adopted hereunder and that such applicant is of good moral character, not less than eighteen years of age, and has the ability to weigh accurately and make correct certified weight tickets. Any license issued under this

chapter shall expire on June 30th following the date of issuance. [1971 ex.s. c 292 § 14; 1969 ex.s. c 100 § 17.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

15.80.470 Weighmaster's license—Renewal date—Penalty fee. If an application for renewal of any license provided for in this chapter is not filed prior to July of any one year, there shall be assessed and added to the renewal fee as a penalty therefor fifty percent of said renewal fee which shall be paid by the applicant before any renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not acted as a weighmaster or weigher subsequent to the expiration of his prior license. [1969 ex.s. c 100 § 18.]

15.80.480 Surety bond. Any applicant for a weighmaster's license shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be in the sum of one thousand dollars. The bond shall be of standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules adopted hereunder. Said bond shall be to the state for the benefit of every person availing himself of the services and certifications issued by a weighmaster, or weigher subject to his control. The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face value of such bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. All such sureties on a bond, as provided herein, shall only be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, but this shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110, as enacted or hereafter amended, concerning notice and proof of service, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. [1969 ex.s. c 100 § 19.]

15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee. Any weighmaster may file an application with the director for a license for any employee or agent to operate and issue certified weight tickets from a scale which such weighmaster is licensed to operate under the provisions of this chapter. Such application shall be submitted on a form prescribed by the director and shall contain the following:

- (1) Name of the weighmaster;

- (2) The full name of the employee or agent and his resident address;

- (3) The position held by such person with the weighmaster;

- (4) The scale or scales from which such employee or agent will issue certified weights; and

- (5) Signature of the weigher and the weighmaster.

Such annual application shall be accompanied by a license fee of five dollars. [1969 ex.s. c 100 § 20.]

15.80.500 Weigher's license—Issuance—Expiration date. Upon the director's satisfaction that the applicant is of good moral character, has the ability to weigh accurately and make correct certified weight tickets and that he is an employee or agent of the weighmaster, the director shall issue a weigher's license which will expire on June 30th following the date of issuance. [1969 ex.s. c 100 § 21.]

15.80.510 Duties of weighmaster. A licensed public weighmaster shall: (1) Keep the scale or scales upon which he weighs any commodity or thing, in conformity with the standards of weights and measures; (2) carefully and correctly weigh and certify the gross, tare and net weights of any load of any commodity or thing required to be weighed; and (3) without charge, weigh any commodity or thing brought to his scale by an inspector authorized by the director, and issue a certificate of the weights thereof. [1969 ex.s. c 100 § 22.]

15.80.520 Certification of weights—Impression seal—Fee—Annual renewal. Certification of weights shall be made by means of an impression seal, the impress of which shall be placed by the weighmaster or weigher making the weight determination upon the weights shown on the weight tickets. The impression seal shall be procured from the director upon the payment of a fee of five dollars, and such fee shall accompany the applicant's application for a weighmaster's license. The seal shall be retained by the weighmaster upon payment of an annual renewal fee of five dollars, and the fee shall accompany the annual renewal application for a weighmaster's license. Any replacement seal needed shall be procured from the director upon payment to the department of the cost for such replacement. An impression seal shall be used only at the scale to which it is assigned, and remains the property of the state and shall be returned forthwith to the director upon the termination, suspension, or revocation of the weighmaster's license. [1983 c 95 § 6; 1969 ex.s. c 100 § 23.]

15.80.530 Certified weight ticket—Form—Contents—Evidence. The certified weight ticket shall be of a form approved by the director and shall contain the following information:

- (1) The date of issuance;

- (2) The kind of commodity weighed, measured, or counted;

- (3) The name of owner, agent, or consignee of the commodity weighed;

- (4) The name of seller, agent or consignor;

(5) The accurate weight, measure or count of the commodity weighed, measured or counted; including the entry of the gross, tare and/or net weight, where applicable;

(6) The identifying numerals or symbols, if any, of each container separately weighed and the motor vehicle license number of each vehicle separately weighed;

(7) The means by which the commodity was being transported at the time it was weighed, measured or counted;

(8) The name of the city or town where such commodity was weighed;

(9) The complete signature of weighmaster or weigher who weighed, measured or counted the commodity; and

(10) Such other available information as may be necessary to distinguish or identify the commodity.

Such weight certificates when so made and properly signed and sealed shall be prima facie evidence of the accuracy of the weights, measures or count shown, as a certified weight, measure or count. [1969 ex.s. c 100 § 24.]

15.80.540 Copies of weight tickets. Certified weight tickets shall be made in triplicate, one copy to be delivered to the person receiving the weighed commodity at the time of delivery, which copy shall accompany the vehicle that transports such commodity, one copy to be forwarded to the seller by the carrier of the weighed commodity, and one copy to be retained by the weighmaster that weighed the vehicle transporting such commodity. The copy retained by the weighmaster shall be kept at least for a period of one year, and such copies and such other records as the director shall determine necessary to carry out the purposes of this chapter shall be made available at all reasonable business hours for inspection by the director. [1969 ex.s. c 100 § 25.]

15.80.550 Weighmaster or weigher to determine weights—Automatic devices. No weighmaster or weigher shall enter a weight value on a certified weight ticket that he has not determined and he shall not make a weight entry on a weight ticket issued at any other location: *Provided, however,* That if the director determines that an automatic weighing or measuring device can accurately and safely issue weights in conformance with the purpose of this chapter, he may adopt a regulation to provide for the use of such a device for the issuance of certified weight tickets. The certified weight ticket shall be so prepared that it will show the weight or weights actually determined by the weighmaster. In any case in which only the gross, the tare or the net weight is determined by the weighmaster he shall strike through or otherwise cancel the printed entries for the weights not determined or computed by him. [1969 ex.s. c 100 § 26.]

15.80.560 Weighing devices to be suitable—Testing of weighing and measuring devices. A licensed public weighmaster shall in making a weight determination as provided for in this chapter, use a weighing device that is suitable for the weighing of the type and amount of

commodity being weighed. The director shall cause to be tested for proper state standards of weight all weighing or measuring devices utilized by any licensed public weighmaster. Certified weights shall not be issued over a device that has been rejected or condemned for repair or use by the director until such device has been repaired. [1969 ex.s. c 100 § 27.]

15.80.570 Weighing devices—Rated capacity to exceed weight of load. A weighmaster shall not use a weighing device to determine the weight of a load when the weight of such load exceeds the manufacturer's maximum rated capacity for such weighing device. If upon inspection the director declares that the maximum rated capacity of any weighing device is less than the manufacturer's maximum rated capacity, the weighmaster shall not weigh a load that exceeds the director's declared maximum rated capacity for such weighing device. [1969 ex.s. c 100 § 28.]

15.80.580 Weighing devices—Platform size to sufficiently accommodate vehicles. No weighmaster shall weigh a vehicle or combination of vehicles to determine the weight of such vehicle or combination of vehicles unless the weighing device has a platform of sufficient size to accommodate such vehicle or combination of vehicles fully and completely as one entire unit. When a combination of vehicles must be broken up into separate units in order to be weighed as prescribed, each separate unit shall be entirely disconnected before weighing and a separate certified weight ticket shall be issued for each separate unit. [1969 ex.s. c 100 § 29.]

15.80.590 Denial, suspension or revocation of licenses—Hearing. The director is hereby authorized to deny, suspend, or revoke a license subsequent to a hearing, if a hearing is requested, in any case in which he finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. Such hearings shall be subject to chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended, concerning contested cases. [1969 ex.s. c 100 § 30.]

15.80.600 Hearings for denial, suspension or revocation of licenses—Notice—Location. For hearings for revocations, suspension, or denial of a license, the director shall give the licensee or applicant such notice as is required under the provisions of chapter 34.04 RCW, as enacted or hereafter amended. Such hearings shall be held in the county where the licensee resides. [1969 ex.s. c 100 § 31.]

15.80.610 Subpoenas—Oaths. The director, for the purposes of this chapter, may issue subpoenas to compel the attendance of witnesses, and/or the production of books and/or documents anywhere in the state. The party shall have opportunity to make his defense, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under

oath which may be administered by the director. [1969 ex.s. c 100 § 32.]

15.80.620 Assuming to act as weighmaster or weigher. It shall be unlawful for any person not licensed pursuant to the provisions of this chapter to:

- (1) Hold himself out, in any manner, as a weighmaster or weigher; or
- (2) Issue any ticket as a certified weight ticket. [1969 ex.s. c 100 § 33.]

15.80.630 Falsifying weight tickets, weight or count—Unlawfully delegating—Presealing before weighing. It shall be unlawful for a weighmaster or weigher to falsify a certified weight ticket, or to cause an incorrect weight, measure or count to be determined, or delegate his authority to any person not licensed as a weigher, or to preseal a weight ticket with his official seal before performing the act of weighing. [1969 ex.s. c 100 § 34.]

15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty. Any person who shall mark, stamp or write any false weight ticket, scale ticket, or weight certificate, knowing it to be false, and any person who influences, or attempts to wrongfully influence any licensed public weighmaster or weigher in the performance of his official duties shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment of not less than thirty days nor more than one year in the county jail, or by both such fine and imprisonment. [1969 ex.s. c 100 § 35.]

15.80.650 Violations—Penalty. Any person violating any provision of this chapter, except as provided in RCW 15.80.640, or rules adopted hereunder, is guilty of a misdemeanor and upon a second or subsequent offense, shall be guilty of a gross misdemeanor: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 100 § 36.]

15.80.900 Chapter cumulative. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1969 ex.s. c 100 § 37.]

15.80.910 Effective date—1969 ex.s. c 100. This act shall take effect on July 1, 1969. [1969 ex.s. c 100 § 38.]

15.80.920 Severability—1969 ex.s. c 100. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1969 ex.s. c 100 § 39.]

Chapter 15.85

AQUACULTURE MARKETING

Sections	
15.85.010	Legislative declaration.
15.85.020	Definitions.
15.85.030	Department principal agency for aquaculture marketing support.
15.85.040	Rules.
15.85.050	Program to assist marketing and promotion of aquaculture products.
15.85.060	Private sector cultured aquatic products—Identification—Rules.

Aquaculture disease control: Chapter 75.58 RCW.

15.85.010 Legislative declaration. The legislature declares that aquatic farming provides a consistent source of quality food, offers opportunities of new jobs, increased farm income stability, and improves balance of trade.

The legislature finds that many areas of the state of Washington are scientifically and biologically suitable for aquaculture development, and therefore the legislature encourages promotion of aquacultural activities, programs, and development with the same status as other agricultural activities, programs, and development within the state.

The legislature finds that aquaculture should be considered a branch of the agricultural industry of the state for purposes of any laws that apply to or provide for the advancement, benefit, or protection of the agriculture industry within the state.

The legislature further finds that in order to ensure the maximum yield and quality of cultured aquatic products, the department of fisheries should provide diagnostic services that are workable and proven remedies to aquaculture disease problems.

It is therefore the policy of this state to encourage the development and expansion of aquaculture within the state. It is also the policy of this state to protect wild-stock fisheries by providing an effective disease inspection and control program and prohibiting the release of salmon or steelhead trout by the private sector into the public waters of the state and the subsequent recapture of such species as in the practice commonly known as ocean ranching. [1985 c 457 § 1.]

Release and recapture of salmon or steelhead unlawful: RCW 75.08.300.

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

(1) "Aquaculture" means the process of growing, farming, or cultivating private sector cultured aquatic products in marine or freshwaters and includes management by an aquatic farmer.

(2) "Aquatic farmer" is a private sector person who commercially farms and manages the cultivating of private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(3) "Private sector cultured aquatic products" are native, nonnative, or hybrids of marine or freshwater plants and animals that are propagated, farmed, or cultivated on aquatic farms under the supervision and management of a private sector aquatic farmer or that are naturally set on aquatic farms which at the time of setting are under the active supervision and management of a private sector aquatic farmer. When produced under such supervision and management, private sector cultured aquatic products include, but are not limited to, the following plants and animals:

Scientific Name	Common Name
Enteromorpha	green nori
Monostroma	awo-nori
Ulva	sea lettuce
Laminaria	konbu
Nereocystis	bull kelp
Porphyra	nori
Iridaea	
Haliotis	abalone
Zhlamys	pink scallop
Hinnites	rock scallop
Tatinopecten	Japanese or weathervane scallop
Protothaca	native littleneck clam
Tapes	manila clam
Saxidomus	butter clam
Mytilus	mussels
Crassostrea	Pacific oysters
Ostrea	Olympia and European oysters
Pacifasticus	crayfish
Macrobrachium	freshwater prawn
Salmo and Salvelinus	trout, char, and Atlantic salmon
Oncorhynchus	salmon
Ictalurus	catfish
Cyprinus	carp
Acipenseridae	sturgeon

(4) "Department" means the department of agriculture.

(5) "Director" means the director of agriculture. [1985 c 457 § 2.]

15.85.030 Department principal agency for aquaculture marketing support. The department is the principal state agency for providing state marketing support services for the private sector aquaculture industry. [1985 c 457 § 3.]

15.85.040 Rules. The department shall adopt rules under chapter 34.04 RCW to implement this chapter. [1985 c 457 § 7.]

15.85.050 Program to assist marketing and promotion of aquaculture products. The department shall exercise its authorities, including those provided by chapters 15.64, 15.65, 15.66, and 43.23 RCW, to develop a program for assisting the state's aquaculture industry to

market and promote the use of its products. The department shall consult with the *advisory council in developing such a program. [1985 c 457 § 4.]

*Reviser's note: The section creating the advisory council, 1985 c 457 § 6, was vetoed by the governor.

15.85.060 Private sector cultured aquatic products—Identification—Rules. The director shall establish identification requirements for private sector cultured aquatic products to the extent that identifying the source and quantity of the products is necessary to permit the departments of fisheries and *game to administer and enforce Titles 75 and 77 RCW effectively. The rules shall apply only to those private sector cultured aquatic products the transportation, sale, processing, or other possession of which would otherwise be required to be licensed under Title 75 or 77 RCW if they were not cultivated by aquatic farmers. The rules shall apply to the transportation or possession of such products on land other than aquatic lands and may require that they be: (1) Placed in labeled containers or accompanied by bills of lading or sale or similar documents identifying the name and address of the producer of the products and the quantity of the products governed by the documents; or (2) both labeled and accompanied by such documents.

The director shall consult with the directors of the departments of fisheries and *game to ensure that such rules enable the departments of fisheries and *game to enforce the programs administered under those titles. If rules adopted under chapter 69.30 RCW satisfy the identification required under this section for shellfish, the director shall not establish different shellfish identification requirements under this section. [1985 c 457 § 5.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

Chapter 15.86

ORGANIC FOOD PRODUCTS

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15.86.070	Certification for organic food producers.

Kosher food products: Chapter 69.90 RCW.

15.86.010 Purpose. The legislature recognizes a public benefit in establishing standards for food products marketed and labeled using the term "organic" or a derivative of the term "organic." Such standards shall also facilitate the development of out-of-state markets for Washington food grown by organic methods. [1985 c 247 § 1.]

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

(1) "Director" means the director of the department of agriculture or the director's designee.

(2) "Organic food" means any food product, including meat, dairy, and beverage, that is marketed using the term organic or any derivative of organic in its labeling or advertising.

(3) "Producer" means any person or organization who or which (a) grows, raises, or produces a food product; and (b) sells the food product as, or offers it for sale as, an organic food.

(4) "Vendor" means anyone who sells organic food to the consumer or another vendor. [1985 c 247 § 2.]

15.86.030 Prohibition on selling or offering for sale food products as organic if grown, raised, or produced with certain substances. A producer or a vendor shall not sell or offer for sale any food product with the representation that the product is an organic food if the producer or vendor knows, or has reason to know, that the food has been grown, raised, or produced with the use of any of the following substances: (1) Fertilizers but excluding manures and other natural fertilizers; (2) any of the following when manufactured by man: Pesticides, hormones, antibiotics, or growth stimulants but excluding *Bacillus thuringensis* and other natural pesticides; (3) arsenicals; or (4) similar substances listed by the director under RCW 15.86.060. A food product shall be considered as "grown, raised, or produced" with a substance specified in this section or listed by the director under RCW 15.86.060 if the substance is applied at any time before sale to retail purchasers. Also, crops shall be considered "grown, raised, or produced" with such a substance if, within one year before seed planting or transplanting or, in the case of perennial crops, within one year before the appearance of the flower bud, the substance is applied to the soil or other growing medium. [1985 c 247 § 3.]

15.86.040 Content of displays, labels, and advertising for sale of organic food. Display placards for the on premise sale of organic food and labels pertaining to organic food shall include the name and address of the producer of the food. Any advertising for the mail order sale of organic food shall include the name and address of the producer of the food. Each producer or vendor responsible for making the labels, placards, or advertising shall maintain such records pertaining thereto as the department may reasonably require. The producer or vendor shall furnish to the department any records requested by it. [1985 c 247 § 4.]

15.86.050 Producers to provide sworn statement of product conformance with RCW 15.86.030. A producer shall not sell to a vendor any food product which the producer represents as an organic food unless before the sale the producer provides the vendor with a sworn

statement that the producer has grown, raised, or produced the product in conformance with RCW 15.86.030. [1985 c 247 § 5.]

15.86.060 Responsibilities of director. (1) The director shall adopt such rules and regulations, in conformity with chapter 34.04 RCW, as the director believes are appropriate for the proper administration of this chapter.

(2) Whenever the director believes it appropriate to protect the interest of consumers of organic foods, the director shall add to the list of substances that may not be included in organic foods under this chapter.

(3) The director shall issue orders to producers or vendors whom it finds are violating any provision of this chapter, or rules or regulations adopted under this chapter, to cease their violations and desist from future violations. Whenever the director finds that a producer or vendor has committed a violation, the director shall impose on and collect from the violator a civil fine not exceeding the total of the following amounts: (a) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation; and (b) one thousand dollars. [1985 c 247 § 6.]

15.86.070 Certification for organic food producers. The director may adopt rules establishing a certification program for producers of organic food. The rules may govern, but are not limited to governing: The number and scheduling of on-farm visits, both announced and unannounced, by certification personnel; recordkeeping requirements; and the submission of product samples for chemical analysis. The rules shall include a fee schedule that will provide for the recovery of the full cost of the certification program. Fees collected under this section shall be deposited in an account within the agricultural local fund and the revenue from such fees shall be used solely for carrying out the provisions of this section, and no appropriation is required for disbursement from the fund. The director may employ such personnel as are necessary to carry out the provisions of this section. [1987 c 393 § 12.]

Chapter 15.88

WINE COMMISSION

Sections

15.88.010	Legislative declaration.
15.88.020	Definitions.
15.88.030	Wine commission created—Composition.
15.88.040	Designation of commission members—Terms.
15.88.050	Appointment of members.
15.88.060	Enforcement of commission obligations against commission assets—Liability of commission members and employees.
15.88.070	Commission powers and duties.
15.88.080	Research, promotional, and educational campaign.
15.88.090	Campaign goals.
15.88.100	Commission members' votes weighted—Composition of commission if assessment not effective July 1, 1989—Votes.

- 15.88.110 Assessments on wine producers and growers to fund commission.
 15.88.900 Construction—1987 c 452.
 15.88.901 Effective dates—1987 c 452.
 15.88.902 Severability—1987 c 452.

15.88.010 Legislative declaration. The legislature declares that:

(1) Marketing is a dynamic and changing part of Washington agriculture and a vital element in expanding the state economy.

(2) The sale in the state and export to other states and abroad of wine made in the state contribute substantial benefits to the economy of the state, provide a large number of jobs and sizeable tax revenues, and have an important stabilizing effect on prices received by agricultural producers. Development of exports of these commodities abroad will contribute favorably to the balance of trade of the United States and of the state. The sale and export are therefore affected with the public interest.

(3) The production of wine grapes in the state is a new and important segment of Washington agriculture which has potential for greater contribution to the economy of the state if it undergoes healthy development.

(4) The general welfare of the people of the state will be served by healthy development of the activities of growing and processing wine grapes, which development will improve the tax bases of local communities in which agricultural land and processing facilities are located, and obviate the need for state and federal funding of local services. The industries are therefore affected with the public interest.

(5) Creation of a commission for the public purpose of administering the revenue of the commission under RCW 66.24.210(3) for the enhancement of production of wine grapes and wine and the marketing of Washington wine will materially advance the industries of growing and processing wine grapes and thereby the interests of the citizens of the state. [1987 c 452 § 1.]

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

(1) "Commission" means the Washington wine commission.

(2) "Director" means the director of agriculture or the director's duly appointed representative.

(3) "Department" means the department of agriculture.

(4) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(5) "Grower" means a person who has at least five acres in production of vinifera grapes.

(6) "Growers' association" means a nonprofit association of Washington producers of vinifera grapes, whether or not incorporated, which the director finds to comprise the interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group of growers of vinifera grapes within the state identified by the director

as fairly representing growers of vinifera grapes within the state.

(7) "Vinifera grapes" means the agricultural product commonly known as *VITIS VINIFERA* and those hybrid of *VITIS VINIFERA* which have predominantly the character of *VITIS VINIFERA*.

(8) "Producer" means any person or other entity which grows within the state vinifera grapes or any person or other entity licensed under Title 66 RCW to produce within the state wine made predominantly from vinifera grapes.

(9) "Wine producer" means any person or other entity licensed under Title 66 RCW to produce within the state wine from vinifera grapes.

(10) "Eastern Washington" means that portion of the state lying east of the Cascade mountain range.

(11) "Western Washington" means that portion of the state lying west of the Cascade mountain range.

(12) "Wine" for the purposes of this section shall be as defined in RCW 66.04.010.

(13) "Wine institute" means a nonprofit association of Washington wine producers, whether or not incorporated, which the director finds to comprise interested persons affected by appointment of members of the commission or, if the director finds that no such association exists, a group composed of all such producers identified as actively engaged in the production of wine within the state. [1987 c 452 § 2.]

15.88.030 Wine commission created—Composition. (1) There is created an agricultural commodity commission to be known and designated as the Washington wine commission. Except as provided in RCW 15.88.100(2), the commission shall be composed of eleven voting members; five voting members shall be growers, five voting members shall be wine producers, and one voting member shall be a wine wholesaler licensed under RCW 66.24.200. Of the grower members, at least one shall be a person who does not have over fifty acres of vinifera grapes in production, at least one shall be a person who has over one hundred acres of vinifera grapes in production, and two may be persons who produce and sell their own wine. Of the wine producer members, at least one shall be a person producing not more than twenty-five thousand gallons of wine annually, at least one shall be a person producing over one million gallons of wine annually, and at least two shall be persons who produce wine from their own grapes. In addition, at least one member shall be a wine producer located in western Washington and at least two members shall be wine producers located in eastern Washington.

(2) In addition to the voting members identified in subsection (1) of this section, the commission shall have one nonvoting member who is a wine producer in this state whose principal wine or wines are produced from fruit other than vinifera grapes.

(3) Except as provided in RCW 15.88.100(2), seven voting members of the commission constitute a quorum for the transaction of any business of the commission.

(4) Each voting member of the commission shall be a citizen and resident of this state and over the age of twenty-one years. Each voting member, except the member holding position eleven, must be or must have been engaged in that phase of the grower or wine producer industry that he or she is appointed to represent, and must during his or her term of office derive a substantial portion of income therefrom, or have a substantial investment in the growing of vinifera grapes or the production of wine from vinifera grapes as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the growing of vinifera grapes or wine production from vinifera grapes; or the manager or executive officer of such a corporation. These qualifications apply throughout each member's term of office. [1987 c 452 § 3.]

15.88.040 Designation of commission members—

Terms. The appointive voting positions on the commission shall be designated as follows: The wine producers shall be designated positions one, two, three, four, and five; the growers shall be designated positions six, seven, eight, nine, and ten; and the wine wholesaler shall be position eleven. The nonvoting member shall be designated position number twelve. The member designated as filling position one shall be a person producing over one million gallons of wine annually. The member designated as position one shall be the sole representative, directly or indirectly, of the producer eligible to hold position one and in no event shall that producer directly or indirectly control more than fifty percent of the votes of the commission.

Except as provided in RCW 15.88.100(2), the regular terms of office shall be three years from the date of appointment and until their successors are appointed. However, the first terms of the members appointed upon July 1, 1987, shall be as follows: Positions one, six, and eleven shall terminate July 1, 1990; positions two, four, seven, and nine shall terminate July 1, 1989; and positions three, five, eight, and ten shall terminate July 1, 1988. The term of the initial nonvoting member shall terminate July 1, 1990. [1987 c 452 § 4.]

15.88.050 Appointment of members. The director shall appoint the members of the commission. In making such appointments of the voting members, the director shall take into consideration recommendations made by the growers' association and the wine institute as the persons recommended for appointment as members of the commission. In appointing persons to the commission, the director shall seek to ensure as nearly as possible a balanced representation on the commission which would reflect the composition of the growers and wine producers throughout the state as to number of acres cultivated and amount of wine produced.

The appointment shall be carried out immediately subsequent to July 1, 1987, and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission under RCW 15.88.040.

In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of the position shall immediately be filled by appointment by the director.

Each member of the commission shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1987 c 452 § 5.]

15.88.060 Enforcement of commission obligations against commission assets—Liability of commission members and employees. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, officer, employee, or agent of the commission in his or her individual capacity. The members of the commission, including employees of the commission, shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other members of the commission. [1987 c 452 § 6.]

15.88.070 Commission powers and duties. The powers and duties of the commission include:

(1) To elect a chairman and such officers as the commission deems advisable. The officers shall include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission shall adopt rules for its own governance, which shall provide for the holding of an annual meeting for the election of officers and transaction of other business and for such other meetings as the commission may direct;

(2) To do all things reasonably necessary to effect the purposes of this chapter. However, the commission shall have no legislative power;

(3) At the pleasure of the commission, to employ and discharge managers, secretaries, agents, attorneys, and employees and to engage the services of independent contractors as the commission deems necessary, to prescribe their duties, and to fix their compensation;

(4) To receive donations of wine from wineries for promotional purposes;

(5) To engage directly or indirectly in the promotion of Washington wine, including without limitation the acquisition in any lawful manner and the dissemination without charge of wine, which dissemination shall not be deemed a sale for any purpose and in which dissemination the commission shall not be deemed a wine producer, supplier, or manufacturer of any kind or the clerk, servant, or agent of a producer, supplier, or manufacturer of any kind. Such dissemination shall be for

agricultural development or trade promotion, which may include promotional hosting and shall in the good faith judgment of the commission be in aid of the marketing, advertising, or sale of wine, or of research related to such marketing, advertising, or sale;

(6) To acquire and transfer personal and real property, establish offices, incur expense, enter into contracts (including contracts for creation and printing of promotional literature, which contracts shall not be subject to chapter 43.78 RCW, but which shall be cancelable by the commission unless performed under conditions of employment which substantially conform to the laws of this state and the rules of the department of labor and industries). The commission may create such debt and other liabilities as may be reasonable for proper discharge of its duties under this chapter;

(7) To maintain such account or accounts with one or more qualified public depositories as the commission may direct, to cause moneys to be deposited therein, and to expend moneys for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(8) To cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(9) To create and maintain a list of producers and to disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(10) To employ, designate as agent, act in concert with, and enter into contracts with any person, council, commission or other entity for the purpose of promoting the general welfare of the vinifera grape industry and particularly for the purpose of assisting in the sale and distribution of Washington wine in domestic and foreign commerce, expending moneys as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington wine in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds; and

(11) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter. [1987 c 452 § 7.]

15.88.080 Research, promotional, and educational campaign. The commission shall create, provide for, and conduct a comprehensive and extensive research, promotional, and educational campaign as crop, sales, and market conditions reasonably require. It shall investigate and ascertain the needs of producers, conditions of markets, and degree of public awareness of products, and take into account the information adduced thereby in the discharge of its duties under this chapter. [1987 c 452 § 8.]

15.88.090 Campaign goals. The commission shall adopt as major objectives of its research, promotional, and educational campaign such goals as will serve the needs of producers, which may include, without limitation, efforts to:

(1) Establish Washington wine as a major factor in markets everywhere;

(2) Promote Washington wineries as tourist attractions;

(3) Encourage favorable reporting of Washington wine and wineries in the press throughout the world;

(4) Establish the state in markets everywhere as a major source of premium wine;

(5) Encourage favorable legislative and regulatory treatment of Washington wine in markets everywhere;

(6) Foster economic conditions favorable to investment in the production of vinifera grapes and Washington wine;

(7) Advance knowledge and practice of production of wine grapes in this state;

(8) Discover and develop new and improved vines for the reliable and economical production of wine grapes in the state; and

(9) Advance knowledge and practice of the processing of wine grapes in the state. [1987 c 452 § 9.]

15.88.100 Commission members' votes weighted—Composition of commission if assessment not effective July 1, 1989—Votes. (Effective July 1, 1989) (1) Except as provided in subsections (2) and (3) of this section, the vote of each of the voting members of the commission shall be weighted as provided by this subsection for the transaction of any of the business of the commission. The total voting strength of the entire voting membership of the commission shall be eleven votes. The vote of position one shall be equal to the lesser of the following: Five and one-half votes; or eleven votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of the membership of the commission shall be divided equally among the remaining members of the commission.

(2) In the event the assessment described in RCW 66.24.215(1)(b) is not effective on July 1, 1989, the positions designated for growers cease to exist. In such an event, the commission shall be composed of six voting members and one nonvoting member. The nonvoting member shall be position seven. Four voting members of the commission constitute a quorum for the modified commission. Of the six votes of the entire voting membership of the modified commission, the vote of position one shall be the lesser of the following: Three votes; or six votes times the percentage of the wine produced in the state that is produced by the person filling position one. The percentage shall be based upon the amount of wine produced in the previous calendar year and shall be rounded to the nearest ten percent. The remaining votes of the membership of the commission shall be divided

equally among the remaining members of the commission.

(3) In the event that the percentage of wine produced by the producer represented by position one falls below twenty-five percent of the wine produced in this state, the weighted voting mechanism provided for in subsections (1) and (2) of this section shall cease to be effective. In that case, the voting shall be based on one vote per position. [1987 c 452 § 10.]

15.88.110 Assessments on wine producers and growers to fund commission. See RCW 66.24.215.

15.88.900 Construction—1987 c 452. This act shall be liberally construed to effectuate its purposes. [1987 c 452 § 19.]

Reviser's note: For codification of "this act" [1987 c 452], see Codification Tables, Volume 0.

15.88.901 Effective dates—1987 c 452. (1) Sections 1 through 9 and 11 through 20 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987.

(2) Section 10 of this act shall take effect July 1, 1989. [1987 c 452 § 21.]

15.88.902 Severability—1987 c 452. 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. [1987 c 452 § 20.]

Chapter 15.98 CONSTRUCTION

Sections

15.98.010	Continuation of existing law.
15.98.020	Title, chapter, section headings not part of law.
15.98.030	Invalidity of part of title not to affect remainder.
15.98.040	Repeals and saving.
15.98.050	Emergency—1961 c 11.

15.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 11 § 15.98.010.]

15.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 11 § 15.98.020.]

15.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision

to other persons or circumstances is not affected. [1961 c 11 § 15.98.030.]

15.98.040 Repeals and saving. See 1961 c 11 § 15.98.040.

15.98.050 Emergency—1961 c 11. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 11 § 15.98.050.]

Title 16

ANIMALS, ESTRAYS, BRANDS AND FENCES

Chapters

- 16.04 Trespass of animals—General.
- 16.08 Dangerous dogs.
- 16.10 Dogs—Licensing—Dog control zones.
- 16.12 Swine, sheep, and goats at large.
- 16.13 Horses, mules, donkeys, cattle at large.
- 16.16 Stallions and jacks at large.
- 16.20 Bulls at large.
- 16.24 Stock restricted areas.
- 16.28 Estrays.
- 16.36 Diseases—Quarantine—Garbage feeding.
- 16.38 Livestock diseases—Diagnostic service program.
- 16.44 Diseases of sheep.
- 16.46 Diseases of poultry.
- 16.48 Slaughtering and transporting livestock.
- 16.49 Custom slaughtering.
- 16.49A Washington meat inspection act.
- 16.50 Humane slaughter of livestock.
- 16.52 Prevention of cruelty to animals.
- 16.54 Abandoned animals.
- 16.57 Identification of livestock.
- 16.58 Identification of cattle through licensing of certified feed lots.
- 16.60 Fences.
- 16.65 Public livestock markets.
- 16.67 Washington state beef commission act.
- 16.68 Disposal of dead animals.
- 16.70 Control of pet animals infected with diseases communicable to humans.
- 16.72 Fur farming.
- 16.74 Washington wholesome poultry products act.

Agister and trainer liens: Chapter 60.56 RCW.
Carrier or racing pigeons—Injury to: RCW 9.61.190 and 9.61.200.
Control of predatory birds injurious to agriculture: RCW 15.04.110, 15.04.120.
"Coyote getters" may be used to control coyotes: RCW 9.41.185.
Director of agriculture: Chapter 43.23 RCW.
Dog license tax, counties: Chapter 36.49 RCW.
Grazing ranges: Chapter 79.28 RCW, RCW 79.01.244, 79.01.296.
Harming a police dog: RCW 9A.76.200.
Killing of person by vicious animal: RCW 9A.32.070.
Larcenous appropriation of livestock: Chapter 9A.56 RCW.
Milk and milk products for animal food: Chapter 15.37 RCW.
Nuisances, agricultural activities: RCW 7.48.300 through 7.48.310.
Race horses: Chapter 67.16 RCW.
Stealing horses or cattle as larceny: Chapter 9A.56 RCW.

Chapter 16.04

TRESPASS OF ANIMALS—GENERAL

Sections

- 16.04.005 Liability for damages—Restraint—Notice.

- 16.04.010 Liability for damages—Restraint—1925 act.
- 16.04.020 Notice of restraint—Owner known.
- 16.04.025 Notice of retention of animals—Determination of owner—Removal of animals.
- 16.04.030 Actions for damages.
- 16.04.040 Jurisdiction—Appeal.
- 16.04.045 Continuance.
- 16.04.050 Substituted service.
- 16.04.060 Sale—When costs may be charged to plaintiff.
- 16.04.070 Surplus—Disposition.
- 16.04.080 Stock on United States military reservation.

Dangerous dogs: RCW 16.08.070 through 16.08.100.

Diseased animals, sale, etc.: RCW 9.08.020.

Disturbance on public highway: RCW 9A.84.030.

Fences: Chapter 16.60 RCW.

16.04.005 Liability for damages—Restraint—Notice. See RCW 16.60.015.

16.04.010 Liability for damages—Restraint—1925 act. Any person suffering damage done by any horses, mares, mules, asses, cattle, goats, sheep, swine, or any such animals, which shall trespass upon any cultivated land, inclosed by lawful fence or situated within any district created pursuant to RCW 16.24.010 through 16.24.065, may retain and keep in custody such offending animals until the owner of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [1925 ex.s. c 56 § 1; 1893 c 31 § 1; RRS § 3090.]

Answer in action to recover property distrained: RCW 4.36.140.

Damages to stock on unfenced railroad: RCW 81.52.050 through 81.52.070.

16.04.020 Notice of restraint—Owner known. Whenever any animals are restrained as provided in RCW 16.04.010, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: *Provided*, He knows to whom such animals belong. [1893 c 31 § 2; RRS § 3091. FORMER PART OF SECTION: 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092, now codified as RCW 16.04.025.]

16.04.025 Notice of retention of animals—Determination of owner—Removal of animals. If the owner or the person having in charge or possession such animals is unknown to the person sustaining the damage, the person retaining such animals shall, within twenty-four hours, notify the county sheriff or the nearest state brand inspector as to the number, description, and location of the animals. The county sheriff or brand inspector shall examine the animals by brand, tattoo, or other

identifying characteristics and attempt to ascertain ownership. If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector or county sheriff shall furnish this information and other pertinent information to the person holding the animals who in turn shall send the notice required in RCW 16.04.020 to the animals' owner of record by certified mail.

If the county sheriff or the brand inspector determines that there is no apparent damage to the property of the person retaining the animals, or if the person sustaining the damage contacts the county sheriff or brand inspector to have the animals removed from his or her property, such animals shall be removed in accordance with chapter 16.13 RCW. Such removal shall not prejudice the property owner's ability to recover damages through civil suit. [1985 c 415 § 24; 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092. Formerly RCW 16.04.020, part.]

16.04.030 Actions for damages. If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, and the costs, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, or in case of horses, mares, mules and asses, within twenty-four hours from the time such notice was posted, if served by posting the same, and in case of cattle, goats, sheep and swine within ten days from the time of such posting, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown the defendant shall be designated as John Doe, and the proceedings shall be the same in all respects as in other civil actions, except as modified in RCW 16.04.010 through 16.04.070. If such suit is commenced in superior court the summons shall require the defendant to appear within five days from the date of service of such summons, if served personally. [1925 ex.s. c 56 § 3; 1893 c 31 § 4; RRS § 3093.]

16.04.040 Jurisdiction—Appeal. District judges shall have exclusive jurisdiction of all actions and proceedings under RCW 16.04.010 through 16.04.070 when the damages claimed do not exceed one hundred dollars: *Provided, however,* That any party considering himself or herself aggrieved shall have the right of appeal to the superior court as in other cases. [1987 c 202 § 177; 1893 c 31 § 9; RRS § 3098.]

Intent—1987 c 202: See note following RCW 2.04.190.

16.04.045 Continuance. If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in RCW 16.04.050 provided, if the proper defendant be unknown to plaintiff. [1893 c 31 § 6; RRS § 3095. Formerly RCW 16.04.050, part.]

16.04.050 Substituted service. If the owner or keeper of such offending animals is unknown to plaintiff at the

commencement of the action, or if on the trial it appears that the defendant is not the proper party, defendant, and the proper party is unknown, service of the summons or notice shall be made by publication, by publishing a copy of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a newspaper of general circulation in the area where the plaintiff resides less than ten days previous to the day of trial. [1985 c 469 § 8; 1893 c 31 § 7; RRS § 3096. FORMER PART OF SECTION: 1893 c 31 § 6; RRS § 3095, now codified as RCW 16.04.045.]

16.04.060 Sale—When costs may be charged to plaintiff. Upon the trial of an action as herein provided [RCW 16.04.010 through 16.04.070] the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs, and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of sale of personal property on execution: *Provided,* That no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damage sustained by defendant. [1893 c 31 § 5; RRS § 3094.]

16.04.070 Surplus—Disposition. If when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county. [1893 c 31 § 8; RRS § 3097.]

16.04.080 Stock on United States military reservation. It shall be unlawful for the owner of any livestock to allow such livestock to run at large or be upon any United States military reservation upon which field artillery firing or other target practice with military weapons is conducted. Any owner who permits livestock to run at large or be upon any such reservation shall do so at the risk of such owner and such owner shall have no claim for damages if such livestock is injured or destroyed while so running at large on such reservation: *Provided, however,* That the commanding officer of any such United States military reservation may issue permits for specific areas and for specific periods of time when firing will not be conducted thereon authorizing the owner of such livestock to permit the same to run at large or be upon any such military reservation. [1937 c 101 § 1; RRS § 3068-1.]

Chapter 16.08
DANGEROUS DOGS
 (Formerly: Damage by dogs)

Sections

- 16.08.010 Liability for injury to stock by dogs.
- 16.08.020 Dogs injuring stock may be killed.
- 16.08.030 Duty of owner to kill marauding dog.
- 16.08.040 Liability for dog bites.
- 16.08.050 When entrance on private property is lawful.
- 16.08.060 Provocation as a defense.
- 16.08.070 Definitions.
- 16.08.080 Dangerous dogs—Certificates of registration—Requirements—Fee.
- 16.08.090 Dangerous dogs—Requirements for restraint—Potentially dangerous dogs—Dogs not declared dangerous.
- 16.08.100 Dangerous dogs—Confiscation—Conditions—Penalties for owners of dogs which attack—Entry in dog fight.

16.08.010 Liability for injury to stock by dogs. The owner or keeper of any dog shall be liable to the owner of any animal killed or injured by such dog for the amount of damages sustained and costs of collection, to be recovered in a civil action. [1985 c 415 § 14; 1929 c 198 § 5; RRS § 3106. Prior: 1919 c 6 § 5; RCS § 3106.]

16.08.020 Dogs injuring stock may be killed. It shall be lawful for any person who shall see any dog or dogs chasing, biting, injuring or killing any sheep, swine or other domestic animal, including poultry, belonging to such person, on any real property owned or leased by, or under the control of, such person, or on any public highway, to kill such dog or dogs, and it shall be the duty of the owner or keeper of any dog or dogs so found chasing, biting or injuring any domestic animal, including poultry, upon being notified of that fact by the owner of such domestic animals or poultry, to thereafter keep such dog or dogs in leash or confined upon the premises of the owner or keeper thereof, and in case any such owner or keeper of a dog or dogs shall fail or neglect to comply with the provisions of this section, it shall be lawful for the owner of such domestic animals or poultry to kill such dog or dogs found running at large. [1929 c 198 § 6; RRS § 3107. Prior: 1919 c 6 § 6; 1917 c 161 § 6; RCS § 3107.]

16.08.030 Duty of owner to kill marauding dog. It shall be the duty of any person owning or keeping any dog or dogs which shall be found killing any domestic animal to kill such dog or dogs within forty-eight hours after being notified of that fact, and any person failing or neglecting to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and it shall be the duty of the sheriff or any deputy sheriff to kill any dog found running at large (after the first day of August of any year and before the first day of March in the following year) without a metal identification tag. [1929 c 198 § 7; RRS § 3108. Prior: 1919 c 6 § 7; 1917 c 161 § 7; RCS § 3108.]

16.08.040 Liability for dog bites. The owner of any dog which shall bite any person while such person is in

or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness. [1941 c 77 § 1; Rem. Supp. 1941 § 3109-1.]

16.08.050 When entrance on private property is lawful. A person is lawfully upon the private property of such owner within the meaning of RCW 16.08.040 when such person is upon the property of the owner with the express or implied consent of the owner: *Provided*, That said consent shall not be presumed when the property of the owner is fenced or reasonably posted. [1979 c 148 § 1; 1941 c 77 § 2; Rem. Supp. 1941 § 3109-2.]

16.08.060 Provocation as a defense. Proof of provocation of the attack by the injured person shall be a complete defense to an action for damages. [1941 c 77 § 3; Rem. Supp. 1941 § 3109-3.]

16.08.070 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 16.08.070 through 16.08.100.

(1) "Potentially dangerous dog" means any dog that when unprovoked: (a) Inflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

(2) "Dangerous dog" means any dog that according to the records of the appropriate authority, (a) has inflicted severe injury on a human being without provocation on public or private property, (b) has killed a domestic animal without provocation while off the owner's property, or (c) has been previously found to be potentially dangerous, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or domestic animals.

(3) "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

(5) "Animal control authority" means an entity acting alone or in concert with other local governmental units for enforcement of the animal control laws of the city, county, and state and the shelter and welfare of animals.

(6) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this chapter or any other law or ordinance

relating to the licensure of animals, control of animals, or seizure and impoundment of animals, and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(7) "Owner" means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of an animal. [1987 c 94 § 1.]

Severability—1987 c 94: "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." [1987 c 94 § 6.]

16.08.080 Dangerous dogs—Certificates of registration—Requirements—Fee. (1) It is unlawful for an owner to have a dangerous dog in the state without a certificate of registration issued under this section. This section shall not apply to dogs used by law enforcement officials for police work.

(2) The animal control authority of the city or county in which an owner has a dangerous dog shall issue a certificate of registration to the owner of such animal if the owner presents to the animal control unit sufficient evidence of:

(a) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog;

(b) A surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least fifty thousand dollars, payable to any person injured by the vicious dog; or

(c) A policy of liability insurance, such as homeowner's insurance, issued by an insurer qualified under Title 48 RCW in the amount of at least fifty thousand dollars, insuring the owner for any personal injuries inflicted by the dangerous dog.

(3)(a) If an owner has the dangerous dog in an incorporated area that is serviced by both a city and a county animal control authority, the owner shall obtain a certificate of registration from the city authority;

(b) If an owner has the dangerous dog in an incorporated or unincorporated area served only by a county animal control authority, the owner shall obtain a certificate of registration from the county authority;

(c) If an owner has the dangerous dog in an incorporated or unincorporated area that is not served by an animal control authority, the owner shall obtain a certificate of registration from the office of the local sheriff.

(4) Cities and counties may charge an annual fee, in addition to regular dog licensing fees, to register dangerous dogs. [1987 c 94 § 2.]

Severability—1987 c 94: See note following RCW 16.08.070.

16.08.090 Dangerous dogs—Requirements for restraint—Potentially dangerous dogs—Dogs not declared dangerous. (1) It is unlawful for an owner of a dangerous dog to permit the dog to be outside the proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under physical restraint of a responsible person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

(2) Potentially dangerous dogs shall be regulated only by local, municipal, and county ordinances. Nothing in this section limits restrictions local jurisdictions may place on owners of potentially dangerous dogs.

(3) Dogs shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a wilful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime. [1987 c 94 § 3.]

Severability—1987 c 94: See note following RCW 16.08.070.

16.08.100 Dangerous dogs—Confiscation—Conditions—Penalties for owners of dogs which attack—Entry in dog fight. (1) Any dangerous dog shall be immediately confiscated by an animal control authority if the: (a) Dog is not validly registered under RCW 16.08.080; (b) owner does not secure the liability insurance coverage required under RCW 16.08.080; (c) dog is not maintained in the proper enclosure; (d) dog is outside of the dwelling of the owner, or outside of the proper enclosure and not under physical restraint of the responsible person. In addition, the owner shall be guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021.

(2) If a dangerous dog of an owner with a prior conviction under this chapter attacks or bites a person or another domestic animal, the dog's owner is guilty of a class C felony, punishable in accordance with RCW 9A.20.021. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(3) The owner of any dog that aggressively attacks and causes severe injury or death of any human, whether the dog has previously been declared potentially dangerous or dangerous, shall be guilty of a class C felony punishable in accordance with RCW 9A.20.021. In addition, the dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length of time, and thereafter destroyed in an expeditious and humane manner.

(4) Any person entering a dog in a dog fight is guilty of a class C felony punishable in accordance with RCW 9A.20.021. [1987 c 94 § 4.]

Severability—1987 c 94: See note following RCW 16.08.070.

Chapter 16.10

DOGS—LICENSING—DOG CONTROL ZONES

Sections

16.10.010	Purpose.
16.10.020	Dog control zones—Determination of need by county commissioners.
16.10.030	Dog control zones—Public hearing, publication of notice.
16.10.040	Dog control zones—Regulations—License fees, collection, disposition.

Dogs—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.070.

16.10.010 Purpose. The purpose of this chapter is to provide for the licensing of dogs within specific areas of particular counties. [1969 c 72 § 1.]

16.10.020 Dog control zones—Determination of need by county commissioners. County commissioners may, if the situation so requires, establish dog control zones within high density population districts, or other specified areas, of a county outside the corporate limits of any city, and outside the corporate limits of any organized township. For such zones, licensing regulations may be established which shall not necessarily be operative in sparsely settled rural districts, or in other portions of the county where they may not be needed. In determining the need for such zones, and in drawing their boundaries, county commissioners shall take into consideration the following factors:

- (1) The density of population in the area proposed to be zoned;
- (2) Zoning regulations, if any, in force in the area proposed to be zoned;
- (3) The public health, safety and welfare within the area proposed to be zoned.

If the commissioners shall find that the area proposed to be zoned is heavily populated, or that the purposes for which the land is being used therein require that dogs be controlled, or that the health, safety, and welfare of the people in the area require such control, they may propose the establishment of a dog control zone. [1969 c 72 § 2.]

16.10.030 Dog control zones—Public hearing, publication of notice. In determining whether a dog control zone should be established, the county commissioners shall call a public hearing, notice of which shall be published once a week for each of four consecutive weeks prior thereto in a newspaper of general circulation within the proposed zone. At such a hearing, proponents and opponents of the proposed dog control zone may appear and present their views. The final decision of the commissioners with respect to the establishment of such a zone shall not be made until the conclusion of the hearing. [1969 c 72 § 3.]

16.10.040 Dog control zones—Regulations—License fees, collection, disposition. The county commissioners shall by ordinance promulgate the regulations to be enforced within a dog control zone. These shall include provisions for the control of unlicensed dogs and

the establishment of license fees. The county sheriff and/or other agencies designated by the county commissioners shall be responsible for the enforcement of the act, including the collection of license fees. Fees collected shall be transferred to the current expense fund of each county. [1969 c 72 § 4.]

Chapter 16.12

SWINE, SHEEP, AND GOATS AT LARGE

Sections

16.12.010	Unlawful to allow swine at large.
16.12.020	Liability for trespassing swine.
16.12.030	Swine may be restrained—Notice.
16.12.070	Fencing against swine unnecessary.
16.12.080	Swine may be driven on highway.
16.12.090	Sheep or goats on land of another unlawful.
16.12.100	Penalty.
16.12.110	When public land deemed private.

16.12.010 Unlawful to allow swine at large. It shall be unlawful for the owner or owners of any swine to allow them to run at large in any county in the state. [1890 p 454 § 1; RRS § 3073. FORMER PART OF SECTION: 1911 c 25 § 5; RRS § 3072, now codified as RCW 16.24.090.]

Swine not permitted at large: RCW 16.24.090.

16.12.020 Liability for trespassing swine. If any swine shall be suffered to run at large in any county of this state contrary to the provisions of RCW 16.12.010 through 16.12.080, and shall trespass upon the land of any person, the owner or person having possession of such swine shall be liable for all damages the owner or occupant of such land may sustain by reason of such trespass; and if the owner or person having possession of such swine shall knowingly or negligently permit the same to run at large contrary to the provisions of RCW 16.12.010 through 16.12.080, for a second or subsequent act of trespass by such swine, such owner or person shall be liable for treble the amount of damages done by the same, and such damages may be recovered in a civil action before any district judge. [1987 c 202 § 178; 1927 c 86 § 1; 1890 p 454 § 2; RRS § 3075.]

Intent—1987 c 202: See note following RCW 2.04.190.

16.12.030 Swine may be restrained—Notice. If any swine shall be found running at large contrary to the provisions of RCW 16.12.010 through 16.12.080, it shall be lawful for any person to restrain the same forthwith, and shall immediately give the owner notice in writing that the person has restrained said swine, and the amount of damages the person claims in the premises, and requiring the owner to take said swine away and pay such damages. If said owner fails to comply with the provisions of this section within three days after receiving such notice, such damages may be recovered in a civil action before any district judge, and such person who sustains damages as aforesaid shall have a lien upon said swine for the damages sustained by the said swine, and for keeping same: *Provided*, That if the owner of

such swine is unknown, the notice required in this section shall be published for two weeks in a newspaper published in the county. [1987 c 202 § 179; 1899 c 39 § 1; 1890 p 454 § 3; RRS § 3075.]

Intent—1987 c 202: See note following RCW 2.04.190.

16.12.070 Fencing against swine unnecessary. It shall not be necessary for any person to fence against swine in this state, and it shall be no defense to any action or proceeding brought or had under the provisions of RCW 16.12.010 through 16.12.080 that the party injured or taking up any swine did not have his lands enclosed by a lawful fence. [1890 p 456 § 7; RRS § 3079.]

16.12.080 Swine may be driven on highway. Nothing in RCW 16.12.010 through 16.12.080 shall be so construed as to prevent owners or other persons from driving swine from one place to another along any public highway, the owner or owners being responsible for all damages that any person or persons may sustain in consequence. [1890 p 456 § 8; RRS § 3080.]

16.12.090 Sheep or goats on land of another unlawful. It shall be unlawful in this state for sheep or goats to enter any land or lands, enclosed or unenclosed, belonging to or in the possession of any person other than the owner of such sheep or goats, unless by the consent of the owner of said land other than the public lands of the United States. [1945 c 33 § 1; 1913 c 159 § 1; 1907 c 53 § 1; 1888 c 115 § 1; Rem. Supp. 1945 § 3100.]

16.12.100 Penalty. Any person, being the owner or having in his possession, charge, or control, as herder, or otherwise, any sheep or goats, who shall herd or drive such sheep or goats upon the lands of another for the purpose of pasture, against the consent of the owner of such lands, shall be deemed guilty of a misdemeanor. [1945 c 33 § 2; 1913 c 159 § 2; 1907 c 53 § 2; 1888 c 115 § 2; Rem. Supp. 1945 § 3101.]

16.12.110 When public land deemed private. Lands owned or claimed by any person under any of the land laws of the United States, subject to the paramount title of the United States, shall be deemed in possession of such person for the purposes of RCW 16.12.090 through 16.12.110. [1888 c 115 § 3; RRS § 3102.]

Chapter 16.13

HORSES, MULES, DONKEYS, CATTLE AT LARGE

Sections

16.13.010	Horses, mules, donkeys, or cattle not permitted at large—Exceptions.
16.13.020	Public nuisance—Impounding.
16.13.025	Classes of estray livestock established.
16.13.030	Where impounded—Identifying animal.
16.13.040	Notice of impounding—Publication—Copy to owner.
16.13.050	Owner to pay costs.
16.13.060	Sale of animal.
16.13.070	Conduct of sale—Disposition of proceeds.
16.13.080	Officer cannot purchase animal.

16.13.090 Penalties.

Stallions and jacks at large: Chapter 16.16 RCW.

16.13.010 Horses, mules, donkeys, or cattle not permitted at large—Exceptions. It shall be unlawful for the owner of any horses, mules, donkeys, or cattle of any age to permit such animals to run at large and not under the care of a herder in any territory which has been designated as a stock restricted area under chapter 16.24 RCW. Such animals may only run at large upon lands belonging to the state or to the United States when the owner thereof has in writing been granted grazing privileges. Cattle of any age may run at large in a range area as provided in chapter 16.24 RCW without a herder except upon any land which has been enclosed by a lawful fence as set forth in chapter 16.60 RCW. [1985 c 415 § 15; 1975 1st ex.s. c 7 § 13; 1951 c 31 § 1.]

16.13.020 Public nuisance—Impounding. Any horses, mules, donkeys, or cattle of any age running at large or trespassing in violation of RCW 16.13.010 as now or hereafter amended are declared to be a public nuisance, and shall be impounded by the sheriff of the county where found. The nearest brand inspector shall also have authority to impound class I estrays as defined in RCW 16.13.025. [1985 c 415 § 16; 1979 c 154 § 6; 1975 1st ex.s. c 7 § 14; 1951 c 31 § 2.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.13.025 Classes of estray livestock established. There are established two classes of estray livestock:

(1) Class I—any livestock at large contrary to the provisions of RCW 16.13.010 as now or hereafter amended, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director; and

(2) Class II—any livestock identified as estray that is offered for sale and as provided for in RCW 16.57.290 as now or hereafter amended. [1979 c 154 § 22.]

Severability—1979 c 154: See note following RCW 15.49.330.

Class I and class II estray livestock defined: RCW 16.57.010.

16.13.030 Where impounded—Identifying animal. Upon taking possession of a class I estray, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded a class I estray, he shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof. [1979 c 154 § 7; 1975 1st ex.s. c 7 § 15; 1951 c 31 § 3.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.13.040 Notice of impounding—Publication—Copy to owner. The brand inspector shall cause to be published once in a newspaper published in the county where the animal was found, a notice of the impounding. The notice shall state:

(1) A description of the animal, including brand, tattoo or other identifying characteristics;

(2) When and where found;

(3) Where impounded; and

(4) That if unclaimed, the animal will be sold at a public livestock market sale, and the date of such sale: *Provided*, That if no newspaper shall be published in such county, copies of the notice shall be posted at four commonly frequented places therein.

If the animal is marked with a brand or tattoo which is registered with the director of agriculture, the brand inspector, on or before the date of publication or posting, shall send a copy of the notice to the owner of record by registered mail. [1975 1st ex.s. c 7 § 16; 1951 c 31 § 4.]

16.13.050 Owner to pay costs. Upon claiming any animal impounded under this chapter, the owner shall pay the costs of transportation and keep thereof. [1951 c 31 § 5.]

16.13.060 Sale of animal. If no person shall claim the animal within ten days after the date of publication or posting of the notice, it shall be sold at the next succeeding public livestock market sale to be held at the sales yard where impounded. [1975 1st ex.s. c 7 § 17; 1951 c 31 § 6.]

16.13.070 Conduct of sale—Disposition of proceeds. The proceeds of the sale of animals impounded under this chapter, after deducting the costs of sale, shall be impounded in the estray fund of the department of agriculture, and if no valid claim is made within one year from the date of sale, the director of the department of agriculture shall transfer the proceeds of sale to the brand fund of the department to be used for the enforcement of this chapter. [1985 c 415 § 17; 1951 c 31 § 7.]

16.13.080 Officer cannot purchase animal. No law enforcement officer shall, directly or indirectly, purchase any animal sold under the provisions of this chapter, or any interest therein. [1951 c 31 § 8.]

16.13.090 Penalties. Any person who shall violate the provisions of RCW 16.13.010 or 16.13.080 shall be guilty of a misdemeanor. [1951 c 31 § 9.]

Chapter 16.16

STALLIONS AND JACKS AT LARGE

Sections

16.16.010	Running at large prohibited.
16.16.020	Proof.
16.16.030	Notice—Removal.
16.16.040	Liability for damages.
16.16.050	Gelding animals at large.
16.16.060	Gelding animals at large—Exception.

Horses, mules, donkeys, cattle at large: Chapter 16.13 RCW.

16.16.010 Running at large prohibited. It shall be unlawful for the owner of stallions in this state to permit

the same to run at large. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred and fifty dollars nor more than two hundred and fifty dollars, and one-half of the fine so enforced shall, in each case, be paid to the complaining witness: *Provided*, That this section will not apply to stallions running with and belonging to bands of horses which are herded and corralled by the owners once each day. [1895 c 124 § 1; RRS § 3085.]

Liability for damages: RCW 16.16.040.

16.16.020 Proof. In any prosecution under RCW 16.16.010 through 16.16.030 proof that the animal running at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal, and proof that said animal is found at large shall be prima facie evidence that the owner permitted the same to be at large. [1895 c 124 § 2; RRS § 3086.]

16.16.030 Notice—Removal. The complaining witness shall notify the owners of said animals, and a reasonable time shall be allowed for the removal of same. [1895 c 124 § 3; RRS § 3087.]

16.16.040 Liability for damages. If any stud horse, stud mule, jackass, ridgling or stag, while running at large out of the enclosed grounds of the owner or keeper, shall damage any other animal by biting or kicking him, or shall do any damage to person or property of any kind whatever, the owner of said stud horse, stud mule, jackass, ridgling or stag, shall be liable for all damages done by him. [Code 1881 § 2549; RRS § 3099.]

16.16.050 Gelding animals at large. It shall be lawful for any person to take up and geld, at the risk of the owner, within the months of April, May, June, July, August, and September, in any year, any stud horse, jackass, or stud mule, of the age of eighteen months and upwards, that may be found running at large out of the enclosed grounds of the owner or keeper, and if the said animal shall die the owner shall have no recourse against the person or persons who may have taken up and gelded, or caused to be gelded, the said animal, if the same has been done by a person in the habit of gelding, and the owner shall pay one dollar and a half therefor. [Code 1881 § 2547; 1871 p 90 § 4; RRS § 3088.]

Castration of bulls: RCW 16.20.010.

16.16.060 Gelding animals at large—Exception. It shall not be lawful for any person or persons to geld any animal knowing such animal is kept or intended to be kept for covering mares; and any person so offending shall be liable to the owner for all damages, to be recovered in any court having proper jurisdiction thereof; but if any owner or keeper of the covering animal shall wilfully or negligently suffer the said animal to run at large out of the enclosed grounds of said owner or keeper, any person may take the said animal and convey him to his owner or keeper, for which such person shall receive

three dollars per day, recoverable before any district judge of the county. For the second offense six dollars per day, and for the third offense said animal may be taken up and gelded. [1987 c 202 § 180; Code 1881 § 2548; 1871 p 90 § 4; RRS § 3089.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 16.20 BULLS AT LARGE

Sections

16.20.010	Castration of bulls at large.
16.20.020	Bulls on range to be registered bulls of recognized breed—Exception.
16.20.030	Proportion of bulls to cows.
16.20.035	RCW 16.20.020 and 16.20.030 not applicable to counties west of Cascades.
16.20.040	Penalty.

16.20.010 Castration of bulls at large. It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of May, any bull above the age of ten months found running at large out of the enclosed grounds of the owner or keeper, and if the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: *Provided*, Such act of castration shall have been skillfully done by a person accustomed to doing the same: *And provided further*, That if the person so taking up or capturing such bull, or causing him to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the keeping of said animal at the rate of fifty cents per day, and take and safely keep said animal thereafter within his own enclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay for such act of castration the sum of one dollar and fifty cents, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided, and the amount for which he may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: *And provided further*, That if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate him without giving any notice to the owner or keeper whatever. [1965 c 66 § 4; 1890 p 453 § 1; RRS § 3081.]

Gelding of stallions and jacks: RCW 16.16.050.

16.20.020 Bulls on range to be registered bulls of recognized breed—Exception. It shall be unlawful for any person, firm, association or corporation to turn upon

or allow to run at large on any range area in this state any bull other than a registered bull of a recognized beef breed. All persons running cattle in common on any range area may, however, agree to run any purebred or crossbred bull of any breed, registered or unregistered, as they may deem appropriate for their area. [1986 c 177 § 1; 1985 c 415 § 18; 1917 c 111 § 1; RRS § 3082.]

16.20.030 Proportion of bulls to cows. Before any person, firm, association or corporation turns upon a range area in this state any female cattle of breeding age of more than fifteen in number, they shall procure and turn with said female breeding cattle one registered bull of recognized beef breed for every forty females or fraction thereof of twenty-five or over. All persons running cattle in common on any range area may, however, agree to any other proportion of bulls to female cattle of breeding age as they may deem appropriate for their area. [1986 c 177 § 2; 1917 c 111 § 2; RRS § 3083.]

16.20.035 RCW 16.20.020 and 16.20.030 not applicable to counties west of Cascades. RCW 16.20.020 and 16.20.030 shall not apply to counties lying west of the summit of the Cascade mountains. [1985 c 415 § 19.]

16.20.040 Penalty. Any person, firm, association or corporation violating any of the provisions of RCW 16.20.020 through 16.20.040 shall be guilty of a misdemeanor. [1917 c 111 § 3; RRS § 3084.]

Chapter 16.24 STOCK RESTRICTED AREAS

Sections

16.24.010	Restricted areas authorized.
16.24.020	Hearing—Notice.
16.24.030	Order establishing area—Publication.
16.24.040	Penalty.
16.24.050	Change of boundaries.
16.24.060	Road signs in range areas.
16.24.065	Stock at large in areas—Unlawful.
16.24.070	Stock at large on highway right-of-way—Unlawful—Impounding.
16.24.090	Swine not permitted at large.

16.24.010 Restricted areas authorized. The board of county commissioners of any county of this state shall have the power to designate by an order made and published, as provided in RCW 16.24.030, certain territory as stock restricted area within such county in which it shall be unlawful to permit livestock of any kind to run at large: *Provided*, That no territory so designated shall be less than two square miles in area: *And provided further*, That RCW 16.24.010 through 16.24.065 shall not affect counties having adopted township organization. All territory not so designated shall be range area, in which it shall be lawful to permit livestock to run at large. [1937 c 40 § 1; 1911 c 25 § 1; RRS § 3068. Prior: 1907 c 230 § 1; 1905 c 91 § 1; R & B § 3166.]

16.24.020 Hearing—Notice. Within sixty days after the taking effect of RCW 16.24.010 through 16.24.065, the county commissioners of each of the several counties of the state may make an order fixing a time and place when a hearing will be had, notice of which shall be published at least once each week for two successive weeks in some newspaper having a general circulation within the county. It shall be the duty of the board of county commissioners at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the establishment of range areas or stock restricted areas as defined in RCW 16.24.010 through 16.24.065. [1937 c 40 § 2; 1923 c 33 § 1; 1911 c 25 § 2; RRS § 3069.]

16.24.030 Order establishing area—Publication. Within thirty days after the conclusion of any such hearing the county commissioners shall make an order describing the stock restricted areas within the county where livestock may not run at large, which order shall be entered upon the records of the county and published in a newspaper having general circulation in such county at least once each week for four successive weeks. [1937 c 40 § 3; 1923 c 33 § 2; 1911 c 25 § 3; RRS § 3070.]

16.24.040 Penalty. Any person, or any agent, employee or representative of a corporation, violating any of the provisions of such order after the same shall have been published or posted as provided in RCW 16.24.030 or, violating any provision of this chapter, shall be guilty of a misdemeanor. [1975 c 38 § 1; 1911 c 25 § 4; RRS § 3071.]

16.24.050 Change of boundaries. When the county commissioners of any county deem it advisable to change the boundary or boundaries of any stock restricted area, a hearing shall be held in the same manner as provided in RCW 16.24.020. If the county commissioners decide to change the boundary or boundaries of any stock restricted area or areas, they shall within thirty days after the conclusion of such hearing make an order describing said change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in such county once each week for four successive weeks. [1937 c 40 § 4; 1923 c 93 § 1; RRS § 3070-1.]

16.24.060 Road signs in range areas. At the point where a public road enters a range area, and at such other points thereon within such area as the county commissioners shall designate, there shall be erected a road sign bearing the words: "RANGE AREA. WATCH OUT FOR LIVESTOCK." [1937 c 40 § 5; RRS § 3070-2.]

16.24.065 Stock at large in areas—Unlawful. No person owning or in control of any livestock shall willfully or negligently allow such livestock to run at large in any stock restricted area, nor shall any person owning

or in control of any livestock allow such livestock to wander or stray upon the right-of-way of any public highway of two or more lanes lying within a stock restricted area when not in the charge of some person. [1985 c 415 § 20; 1937 c 40 § 6; RRS § 3070-3. Formerly RCW 16.24.070, part.]

16.24.070 Stock at large on highway right-of-way—Unlawful—Impounding. It shall be unlawful for any person to cause or permit any livestock to graze or stray upon any portion of the right-of-way of any public highway of this state, within any stock restricted area. It shall be unlawful for any person to herd or move any livestock over, along or across the right-of-way of any public highway, or portion thereof, within any stock restricted area, without having in attendance a sufficient number of persons to control the movement of such livestock and to warn or otherwise protect vehicles traveling upon such public highway from any danger by reason of such livestock being herded or moved thereon.

In the event that any livestock is allowed to stray or graze upon the right-of-way of any public highway, or portion thereof, within any stock restricted area, unattended, the same may be impounded for safekeeping and, if the owner be not known, complaint may be instituted against such stock in a court of competent jurisdiction. Notice shall be published in one issue of a paper of general circulation published as close as possible to the location where the livestock were found, describing as nearly as possible the stock, where found, and that the same are to be sold. In the event that the owner appears and convinces the court of his right thereto, the stock may be delivered upon payment by him of all costs of court, advertising and caring for the stock. In the event no person claiming the right thereto shall appear by the close of business on the tenth day following and exclusive of the date of publication of notice, the stock may be sold at public or private sale, all costs of court, advertising and caring therefor paid from the proceeds thereof and the balance certified by the judge of the court ordering such sale, to the treasurer of the county in which located, to be credited to the county school fund. [1937 c 189 § 127; RRS § 6360-127, part. Prior: 1927 c 309 § 41, part; RRS § 6362-41, part. FORMER PART OF SECTION: 1937 c 40 § 6; RRS § 3070-3, now codified as RCW 16.24.065. Formerly RCW 16.24.070 and 16.24.080.]

16.24.090 Swine not permitted at large. The owner of swine shall not allow them to run at large at any time or within any territory, and any violation of this section shall render such owner liable to the penalties provided for in RCW 16.24.040: *Provided*, That swine may be driven upon the highways while in charge of sufficient attendants. [1911 c 25 § 5; RRS § 3072. Formerly RCW 16.12.010, part.]

Swine may be driven on highway: RCW 16.12.080.

Unlawful to allow swine at large: RCW 16.12.010.

Chapter 16.28
ESTRAYS

Sections

- 16.28.160 Separating estrays from herd—Penalty—Payment of fine to school fund—Remittance of district court fines, penalties, fees and forfeitures.
16.28.165 Moving another's livestock from range.
16.28.170 Moving another's livestock from range—Penalty.

16.28.160 Separating estrays from herd—Penalty—Payment of fine to school fund—Remittance of district court fines, penalties, fees and forfeitures. It shall be the duty of any and all persons searching or hunting for stray horses, mules or cattle, to drive the band or herd in which they may find their stray horses, mules or cattle, into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray shall drive them out of and away from the corral in which they may be driven before setting the herd at large. Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction thereof, before a district judge, shall be fined in any sum not exceeding one hundred dollars, and half the costs of prosecution; said fine so recovered to be paid into the school fund of the county in which the offense was committed; and in addition thereto shall be imprisoned until the fine and costs are paid: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 181; 1969 ex.s. c 199 § 14; Code 1881 § 2537; RRS § 3050. Prior: 1869 pp 408, 409 §§ 1, 2.]

Intent—1987 c 202: See note following RCW 2.04.190.

16.28.165 Moving another's livestock from range. No person shall remove any livestock belonging to another from the range on which they are permitted to run at large, without the prior consent of the owner thereof. The owner of any livestock may move his or her own livestock, together with such other livestock as cannot be separated from his or her own, to the nearest corral, or other facility in order to separate his or her own livestock, if the other livestock are returned to the same location from which they were moved within twenty-four hours. [1985 c 415 § 21; 1891 c 12 § 1; RRS § 3048. Formerly RCW 16.28.170, part.]

16.28.170 Moving another's livestock from range—Penalty. Any person violating the provisions of RCW 16.28.165 shall be guilty of a misdemeanor, and on conviction thereof shall be punishable by a fine of not less than twenty nor exceeding five hundred dollars, or imprisonment not exceeding six months nor less than thirty days, or both such fine and imprisonment, discretionary with the court having jurisdiction of the same. [1891 c 12 § 2; RRS § 3049. FORMER PART OF SECTION: 1891 c 12 § 1; RRS § 3048, now codified as RCW 16.28.165.]

Chapter 16.36
DISEASES—QUARANTINE—GARBAGE
FEEDING

Sections

- 16.36.005 Definitions.
16.36.010 "Quarantine" defined.
16.36.020 Powers of director.
16.36.030 Breaking quarantine—Penalty.
16.36.040 Rules and regulations—Inspections and tests—Intercounty embargoes and quarantine.
16.36.050 Importation—Health certificates—Permits—Exceptions.
16.36.060 Obstructing enforcement, unlawful—Tests.
16.36.070 Danger of infection—Emergencies.
16.36.080 Veterinarians to report diseases.
16.36.090 Destruction of diseased or quarantined animals.
16.36.096 State-federal cooperation against diseases—Slaughter—Indemnities, minimum.
16.36.100 Cooperation with federal government.
16.36.103 Swine—Treatment of garbage—Investigation of premises.
16.36.105 Swine, garbage feeding, license—Fee.
16.36.107 Swine, garbage feeding, license—Application—Inspection—Facilities required.
16.36.108 Swine, garbage feeding, license—Denial or revocation.
16.36.109 Swine, garbage feeding, license—Exemptions.
16.36.110 Penalties—Injunction.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.36.005 Definitions. As used in this chapter:

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

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

"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.

"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. [1987 c 163 § 1; 1953 c 17 § 1.]

16.36.010 "Quarantine" defined. The word "quarantine" as used in *this act shall mean the placing and restraining of any animal or animals by the owner or agents in charge thereof, either within a certain described and designated enclosure or area within this state, or the restraining of any such animal or animals from entering this state, as may be directed in writing by the director of agriculture, or his duly authorized representative. Any animal or animals so quarantined within the state shall at all times be kept separate and apart from other domestic animals and not allowed to have anything in common therewith. [1927 c 165 § 2; RRS § 3111. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

***Reviser's note:** "this act", chapter 165, Laws of 1927, as amended, has been codified within chapters 16.36, 16.40 and 16.44 RCW.

16.36.020 Powers of director. The director shall have general supervision of the prevention of the spread and the suppression of infectious, contagious, communicable and dangerous diseases affecting animals within, in transit through and being imported into the state. The director may establish and enforce quarantine of and against any and all domestic animals which are affected with any such disease or that may have been exposed to others thus affected, whether within or without the state, for such length of time as he deems necessary to determine whether any such animal is infected with any such disease. The director shall also enforce and administer the provisions of this chapter pertaining to garbage feeding and when garbage has been fed to swine, the director may require the disinfection of all facilities, including yard, transportation and feeding facilities, used for keeping such swine.

The director shall also have the authority to regulate the sale, distribution, and use of veterinary biologics in the state and may adopt rules to restrict the sale, distribution, or use of any veterinary biologic in any manner the director determines to be necessary to protect the health and safety of the public and the state's animal population. [1987 c 163 § 2; 1979 c 154 § 8; 1953 c 17 § 2; 1947 c 172 § 1; 1933 c 177 § 1; 1927 c 165 § 1; formerly Rem. Supp. 1947 § 3110. Prior: 1915 c 100 § 5; 1901 c 112 § 2; 1895 c 167 § 2.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.030 Breaking quarantine—Penalty. It shall be unlawful for the owner or owners of any animal quarantined, or their agents or employees, to fail to place the quarantined animals within the certain described and designated enclosure or area within this state, to break such quarantine or to move, or allow to be moved, any such animal from within the quarantined area, or across the quarantined line, as established, or to sell, exchange or in any other way part with the products of such animals, without first obtaining a permit in writing from the director of agriculture, or his duly authorized representative. Any owner or owners of any quarantined animal or any agent of such owner or owners, who fails to comply with or violates any such quarantine or who negligently allows any such quarantined animal to escape from quarantine, and any other person who removes any quarantined animal from such quarantine shall be guilty of a gross misdemeanor. [1985 c 415 § 1; 1979 c 154 § 9; 1947 c 172 § 2; 1927 c 165 § 3; Rem. Supp. 1947 § 3112. Prior: 1915 c 100 § 6, part; 1903 c 26 § 2, part.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.040 Rules and regulations—Inspections and tests—Intercounty embargoes and quarantine. The director of agriculture shall have power to promulgate and enforce such reasonable rules, regulations and orders as

he may deem necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases affecting domestic animals in this state, and to promulgate and enforce such reasonable rules, regulations and orders as he may deem necessary or proper governing the inspection and test of all animals within or about to be imported into this state, and to promulgate and enforce intercounty embargoes and quarantine to prevent the shipment, trailing, trucking, transporting or movement of bovine animals from any county that has not been declared modified accredited by the United States department of agriculture, animal and plant health inspection service, for tuberculosis and/or certified brucellosis-free, into a county which has been declared modified accredited by the United States department of agriculture, animal and plant health inspection service, for tuberculosis and/or certified brucellosis-free, unless such animals are accompanied by a negative certificate of tuberculin test made within sixty days and/or a negative brucellosis test made within the forty-five day period prior to the movement of such animal into such county, issued by a duly authorized veterinary inspector of the state department of agriculture, or of the United States department of agriculture, animal and plant health inspection service, or an accredited veterinarian authorized by permit issued by the director of agriculture to execute such certificate. [1979 c 154 § 10; 1947 c 172 § 3; 1927 c 165 § 4; Rem. Supp. 1947 § 3113. Prior: 1915 c 100 § 4; 1901 c 112 § 2; 1895 c 167 § 2.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.050 Importation—Health certificates—Permits—Exceptions. It shall be unlawful for any person, or any railroad or transportation company, or other common carrier, to bring into this state for any purpose any domestic animals without first having secured an official health certificate, certified by the state veterinarian of origin that such animals meet the health requirements promulgated by the director of agriculture of the state of Washington: *Provided*, That this section shall not apply to domestic animals imported into this state for immediate slaughter, or domestic animals imported for the purpose of unloading for feed, rest, and water, for a period not in excess of twenty-eight hours except upon prior permit therefor secured from the director of agriculture. It shall be unlawful for any person to divert en route for other than to an approved, inspected stockyard for immediate slaughter or to sell for other than immediate slaughter or to fail to slaughter within fourteen days after arrival, any animal imported into this state for immediate slaughter. It shall be unlawful for any person, railroad, transportation company, or other common carrier, to keep any domestic animals which are unloaded for feed, rest and water in other than quarantined pens, or not to report any missing animals to the director of agriculture at the time the animals are reloaded. [1979 c 154 § 11; 1947 c 172 § 4; 1927 c 165 § 5; Rem. Supp. 1947 § 3114. Prior: 1915 c 100 § 7; 1905 c 169 § 1; 1903 c 125 § 1.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.060 Obstructing enforcement, unlawful—

Tests. It shall be unlawful for any person to wilfully hinder, obstruct, or resist the director of agriculture or any duly authorized representative, or any peace officer acting under him or them, when engaged in the performance of the duties or in the exercise of the powers conferred by this chapter, and it shall be unlawful for any person to wilfully fail to comply with or violate any rule, regulation or order promulgated by the director of agriculture or his duly authorized representatives under the provisions of this chapter. The director of agriculture shall have the authority under such rules and regulations as shall be promulgated by him to enter at any reasonable time the premises of any livestock owner to make tests on any animals for diseased conditions, and it shall be unlawful for any person to interfere with such tests in any manner, or to violate any segregation or identification order made in connection with such tests by the director of agriculture, or his duly authorized representative. [1985 c 415 § 2; 1979 c 154 § 12; 1947 c 172 § 5; 1927 c 165 § 6; Rem. Supp. 1947 § 3115. Prior: 1895 c 167 § 3.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.070 Danger of infection—Emergencies.

Whenever a majority of any board of health, board of county commissioners, city council or other governing body of any incorporated city or town, or trustees of any township, whether in session or not, shall, in writing or by telegraph, notify the director of agriculture of the prevalence of or probable danger of infection from any of the diseases of domestic animals the director of agriculture personally, or by the supervisor of dairy and livestock, or by a duly appointed and deputized veterinarian of the division of dairy and livestock, shall at once go to the place designated in said notice and take such action as the exigencies may in his judgment demand, and may in case of an emergency appoint deputies or assistants, with equal power to act. The compensation to be paid such emergency deputies and assistants, shall be fixed by the director of agriculture in conformity with the standards effective in the locality in which the services are performed. [1947 c 172 § 6; 1927 c 165 § 7; Rem. Supp. 1947 § 3116. Prior: 1895 c 167 § 4.]

16.36.080 Veterinarians to report diseases. It shall be unlawful for any person registered to practice veterinary medicine, surgery and dentistry in this state not to immediately report in writing to the director of agriculture the discovery of the existence or suspected existence among domestic animals within the state of any reportable diseases as published by the director of agriculture. [1947 c 172 § 7; 1927 c 165 § 8; Rem. Supp. 1947 § 3117.]

16.36.090 Destruction of diseased or quarantined animals. Whenever in the opinion of the director of agriculture, upon the report of the state veterinarian, the

public welfare demands the destruction of any animal found to be affected with any infectious, contagious, communicable or dangerous disease, or held under quarantine for brucellosis when the owner of the animal fails or refuses to follow a herd plan established by the state veterinarian, he shall be authorized to, by written order, direct such animal or animals to be destroyed by or under the direction of the state veterinarian. [1985 c 415 § 3; 1979 c 154 § 13; 1947 c 172 § 8; 1927 c 165 § 9; Rem. Supp. 1947 § 3118. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.36.096 State-federal cooperation against diseases—Slaughter—Indemnities, minimum. The director of agriculture, in order to protect the public health and welfare, may enter into cooperative programs with the federal government or agencies thereof for the prevention or eradication of any contagious, infectious, or communicable disease which is affecting or which may affect the health of the animal population of this state.

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

In ordering the slaughter or destruction of any animals pursuant to this section, the provisions for payment of indemnity shall not apply to animals (1) belonging to the federal government or any of its agencies, this state or political subdivision thereof, or any municipal corporation; and (2) to any animals which have been brought into this state and have been in this state for a period of less than six months before being ordered slaughtered or destroyed by the director of agriculture. [1985 c 415 § 4; 1963 ex.s. c 8 § 1.]

16.36.100 Cooperation with federal government. The governor and the director of agriculture shall have the power to cooperate with the government of the United States in the prevention and eradication of diseases of domestic animals and the governor shall have the power to receive and receipt for any moneys receivable by this state under the provisions of any act of congress and pay the same into the hands of the state treasurer as custodian for the state to be used and expended in carrying out the provisions of *this act and the act or acts of congress under which said moneys are paid over to the state. [1927 c 165 § 10; RRS § 3119. Prior: 1901 c 112 § 3, part; 1895 c 167 § 5, part.]

*Reviser's note: "this act", see note following RCW 16.36.010.

16.36.103 Swine—Treatment of garbage—Investigation of premises. All garbage before being fed to swine shall be thoroughly heated to at least two hundred and twelve degrees fahrenheit for at least thirty minutes in equipment and by methods approved by the director. The director may enter at reasonable times upon any private or public property for the purpose of investigating conditions relating to the treating of garbage to be fed to swine. [1953 c 17 § 3.]

16.36.105 Swine, garbage feeding, license—Fee. No person shall feed garbage to swine without first securing a license therefor from the department of agriculture. The license shall be renewed on the thirtieth of June of each year. Application therefor shall be accompanied by a license fee of ten dollars which shall be returned to the applicant if the license is denied, or credited to the general fund if the license is granted. The license is nontransferable and a separate license shall be required for each place of business if an operator has more than one feeding station. [1953 c 17 § 4.]

Feeding of carcasses to swine: RCW 16.68.150.

16.36.107 Swine, garbage feeding, license—Application—Inspection—Facilities required. Upon receipt of an application for a license to feed garbage, the director shall cause an inspection to be made of the premises to determine that the location, construction and facilities meet the following requirements and any rules or regulations on sanitation which may be hereafter promulgated:

(1) Feeding platforms must be constructed of impervious material which must be kept reasonably clean at all times with provision for the proper disposal of all refuse to prevent fly breeding, harboring of rats or other insanitary conditions.

(2) Ample water supply under pressure must be provided to properly clean the feeding area and an approved drainage system must be provided for all cleaning operations. [1953 c 17 § 5.]

16.36.108 Swine, garbage feeding, license—Denial or revocation. Upon failure to comply with any of the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, or 16.36.107, or any rules or regulations promulgated under chapter 16.36 RCW, the director may revoke such license or refuse to issue a license to an applicant after first giving the licensee or applicant an opportunity to be heard in regard to the violation. [1953 c 17 § 6.]

16.36.109 Swine, garbage feeding, license—Exemptions. RCW 16.36.103, 16.36.105, 16.36.107 and 16.36.108 shall not apply to any person feeding garbage from his own domestic household. [1953 c 17 § 7.]

16.36.110 Penalties—Injunction. A violation of or a failure to comply with any provision of this chapter

shall be a misdemeanor: *Provided*, That any violation of RCW 16.36.030, 16.36.040, 16.36.050, or that part of RCW 16.36.060 which makes it unlawful for any person to wilfully hinder, obstruct, or resist the director of agriculture or any duly authorized representative, or any peace officer acting under him or them when engaged in the performance of the duties or in the exercise of the powers conferred by this chapter shall be a gross misdemeanor. Each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of RCW 16.36.005, 16.36.020, 16.36.103, 16.36.105, 16.36.107, 16.36.108 or 16.36.109 may be enjoined from continuing such violation. [1981 c 296 § 14; 1957 c 22 § 5. Prior: 1953 c 17 § 8; 1927 c 165 § 33; RRS § 3142.]

Severability—1981 c 296: See note following RCW 15.04.020.

Chapter 16.38

LIVESTOCK DISEASES—DIAGNOSTIC SERVICE PROGRAM

Sections

16.38.010	Declaration of purpose.
16.38.020	Director authorized to carry on diagnostic program.
16.38.030	Employment of personnel.
16.38.040	Agreements and/or contracts with other entities.
16.38.050	Acceptance of gifts, funds, equipment, etc.
16.38.060	Schedule of fees may be established—Use.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.38.010 Declaration of purpose. The production of livestock is one of the largest industries in this state; and whereas livestock disease constitutes a constant threat to the public health and the production of livestock in this state; and whereas the prevention and control of such livestock diseases by the state may be best carried on by the establishment of a diagnostic service program for livestock diseases; therefore it is in the public interest and for the purpose of protecting health and general welfare that a livestock diagnostic service program be established. [1969 c 100 § 1.]

16.38.020 Director authorized to carry on diagnostic program. The director of agriculture is hereby authorized to carry on a diagnostic service program for the purpose of diagnosing any livestock disease which affects or may affect any livestock which is or may be produced in this state or otherwise handled in any manner for public distribution or consumption. [1969 c 100 § 2.]

16.38.030 Employment of personnel. In carrying out such diagnostic service program the director of agriculture may employ, subject to the state civil service act, chapter 41.06 RCW, the necessary personnel to properly effectuate such diagnostic service program. [1969 c 100 § 3.]

16.38.040 Agreements and/or contracts with other entities. In carrying out such diagnostic service program the director of agriculture may enter into agreements

and/or contracts with any other governmental agencies whether state or federal or public institution such as Washington State University or private institutions and/or research organizations. [1969 c 100 § 4.]

16.38.050 Acceptance of gifts, funds, equipment, etc. In carrying out such diagnostic service program, the director of agriculture may accept public or private funds, gifts or equipment or any other necessary properties. [1969 c 100 § 5.]

16.38.060 Schedule of fees may be established—Use. The director may, following a public hearing, establish a schedule of fees for services performed in carrying out such diagnostic service program. All fees collected under this provision shall be retained by the director of agriculture to be spent only for carrying out the purposes of this chapter. [1986 c 203 § 6; 1969 c 100 § 6.]

Severability—1986 c 203: See note following RCW 15.04.100.

Chapter 16.44

DISEASES OF SHEEP

Sections

16.44.020	Duty to inspect sheep—Quarantine—Certificate to transfer—Expenses under quarantine—Oaths.
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16.44.140	Duty to report infection—Penalty.
16.44.150	Duty of officials to exercise care—Penalty.
16.44.160	Negligence of owner of infected stock—Liability.
16.44.180	Penalty.

Diseased animals, sale, etc.: RCW 9.08.020.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.44.020 Duty to inspect sheep—Quarantine—Certificate to transfer—Expenses under quarantine—Oaths. It shall be the duty of the director of agriculture to cause to be investigated by qualified representatives of the division of dairy and livestock all cases of contagious, infectious and communicable diseases among sheep within this state which may come to his or their knowledge, and to make official visits of inspection of any locality where such diseases exist or where they have reason to believe that such diseases may exist, and to inspect or cause to be inspected by a duly qualified veterinarian any sheep within the state, and all

sheep brought into the state, from any other state, territory or foreign country, and he or they shall have authority to order a quarantine of any infected premises, and in case any such disease shall become prevalent in any locality within the state, the director of agriculture may issue a proclamation forbidding any sheep from being transferred from said locality without a certificate issued by him or under his direction by a representative of the division of dairy and livestock showing such animals to be in good health. The expenses of herding, feeding and caring for sheep quarantined under the provisions of this section shall be paid by the owner thereof. The director of agriculture, the supervisor and all inspectors and veterinarians of the division of dairy and livestock shall have the power to administer oaths and examine witnesses in so far as the same may be necessary in the performance of their duties. [1927 c 165 § 16; RRS § 3125. Prior: See Reviser's note below. Formerly 16.44.020 and 16.44.090, part.]

Reviser's note: For prior laws on this subject, see 1925 ex.s. c 56; 1909 c 189; 1907 c 112; 1901 c 76; 1897 c 26; 1895 c 143; 1888 c 116; Code 1881 §§ 2228-2237; 1873 pp 481, 482; 1869 pp 377, 378; 1867 pp 148, 149; 1866 pp 104-106.

Expenses incurred under provisions of chapter 16.44 RCW paid by owner of sheep: RCW 16.44.090.

16.44.030 Out of state infection—Importation prohibited—Proclamation—Penalty. Whenever the governor has reason to believe, or the director of agriculture shall certify to the governor, that scabies or other contagious, infectious or communicable diseases of sheep have become prevalent in any locality or localities of any other state or territory or foreign country, or that conditions exist that render sheep from such locality likely to convey disease, the governor shall by proclamation declare such locality as presumably infected, and prohibit importation therefrom of any sheep into this state, except as under such restrictions as the director of agriculture may deem proper. Any person, persons, firm or corporation, who, after publication of such proclamation, having in charge or receiving any sheep from any of the prohibited districts, transports, conveys or drives the same to or within the limits of this state shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred nor more than one thousand dollars, and shall be liable for all damages sustained by any person, persons, firm or corporation by reason of the importation into this state of such sheep from prohibited districts: *Provided, however,* That nothing contained in this section shall prohibit the transportation of animals from such prohibited districts through the state by railroad or steamboat under such restrictions and regulations as may be prescribed by the law of this state or by the government of the United States. [1927 c 165 § 17; RRS § 3126. Prior: See Reviser's note to RCW 16.44.020.]

16.44.040 Cooperation with federal agency—Manner of treatment. The governor shall, through the secretary of agriculture of the United States government, request the cooperation of the United States bureau of animal industry in controlling and eradicating

contagious, infectious and communicable diseases in sheep, and when said bureau, through its duly authorized representatives, agents or employees, shall be thus engaged, they shall possess the same power and authority in this state as the director of agriculture and the supervisor and veterinary inspectors of the division of dairy and livestock by virtue of *this act; and all dipping and other treatment required for the control and eradication of such diseases within this state shall be performed in the manner prescribed by the United States bureau of animal industry, and the dips, remedies and appliances used shall be those approved by said bureau. [1927 c 165 § 18; RRS § 3127. Prior: See Reviser's note to RCW 16.44.020. FORMER PART OF SECTION: 1927 c 165 § 20; RRS § 3129, now codified in RCW 16.44.045.]

*Reviser's note: "this act," see note following RCW 16.36.010.

16.44.045 Authority to inspect, quarantine and treat sheep. The director of agriculture and the supervisor and veterinary inspectors of the division of dairy and livestock and the officials of the United States bureau of animal industry shall have authority to inspect, quarantine and treat sheep affected with any contagious, infectious or communicable disease or diseases, or suspected of being so affected, or that have been exposed to any such disease. [1927 c 165 § 20; RRS § 3129. Prior: See Reviser's note to RCW 16.44.020. Formerly RCW 16.44.040, part.]

Duty of officials to exercise care—Penalty: RCW 16.44.150.

16.44.050 Quarantine areas—Penalty for breaking. In all cases where quarantine of sheep is authorized by the provisions of *this act, the director of agriculture, the supervisor and the veterinarians and inspectors of the division of dairy and livestock and the officials of the United States bureau of animal industry are each and all empowered to designate and specify the place, limits and boundaries of any quarantine area or territory, and they are hereby given authority over the same until the purpose of such quarantine shall have been effected, and any person, persons, firm or corporation owning or having in his or their possession any sheep within such quarantined area, who shall permit or allow any of such sheep to go beyond the limits of such area, without permit from the official in charge, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and each of the officials above named are hereby clothed with full authority to control sheep and territory in quarantine, and to take and hold possession thereof as provided by the terms of *this act, and for all purposes thereof. [1927 c 165 § 27; RRS § 3136. Prior: See Reviser's note to RCW 16.44.020.]

*Reviser's note: "this act," see note following RCW 16.36.010.

16.44.060 Scabies—Dipping—Certificate of health. Whenever it becomes necessary by reason of the

prevalence of scabies, or exposure to scabies, of the sheep of any county or counties in this state, the director of agriculture shall have full authority to issue an order compelling the dipping of all the sheep in such county, counties or localities, whether all the sheep at the time be affected with or exposed to scabies or not; and such dipping shall be done under the supervision of a duly appointed and qualified veterinary inspector of the division of livestock or a federal inspector, and shall be done in some dip or dips approved by the United States bureau of animal industry, and be performed in a manner in accordance with the rules and regulations of said bureau. After dipping, when the official in charge shall be satisfied that the sheep are in a sound and healthy condition, the owner shall be entitled to receive a certificate to that effect signed by said official in such form as the director of agriculture may prescribe and such certificate shall permit the sheep to move in and through all counties in this state so long as they remain free from disease and exposure thereto. [1927 c 165 § 19; RRS § 3128. Prior: See Reviser's note to RCW 16.44.020.]

16.44.070 Quarantine of entire flock—Dipping—Notice—Penalty. Whenever upon inspection as provided in RCW 16.44.045, any sheep, or band or flock of sheep, or any portion of them kept or herded in any county of the state shall be found infected with scabies or any other contagious, infectious or communicable disease, the entire band or flock in which said infected sheep are running or ranging shall be considered as infected and treated as such and the officer making the inspection shall immediately quarantine the entire band or flock and forthwith notify the owner or person in charge of such sheep in writing, to dip said sheep twice for said disease within the period of thirty days from said notice; the first dipping not to exceed fifteen days from the receipt of said notice; and the second dipping to be within the period from ten to fourteen days thereafter; and also notify the owner or person in charge of such sheep in writing to keep such sheep free from contact with other sheep, during such period, by such means as the officer shall specify until after the second dipping: *Provided*, That in case the owner or person in charge shall regard it unsafe to dip such sheep on account of their condition, especially ewes heavy with lamb, or by reason of the inclemency of the weather, the official in charge may authorize such owner or person in charge to place such sheep in a corral, field, feedyard or appropriate range, where such sheep shall be kept under quarantine regulations and free from contact with other sheep until such time as they are in condition to and are dipped as hereinabove provided. Any person or persons so allowed to keep sheep in such corral, field, feedyard or range, who shall wilfully or knowingly take or permit to be taken any sheep therefrom, except as permitted or directed by the officer in charge, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 21; RRS § 3130. Prior: See Reviser's note to RCW 16.44.020.]

16.44.080 Refusal to dip—Seizure—Cost. If any owner or person in charge of any sheep shall neglect or refuse to dip the same as required by this act upon the request of the director of agriculture or his duly authorized representative or any federal official clothed with power under *this act, or to permit the same to be dipped by them, it shall be the duty of such officer to seize such animals and dip the same, and he is hereby given authority so to do, and when in the opinion of the officer the sheep are restored to health and free from possible infection he shall notify in writing the owner or person in charge of the sheep of the amount of the costs, charges and expenses incurred by him, and the same shall be paid within ten days of the receipt of such notice and shall be a lien on the sheep and may be collected in the manner provided by law for the foreclosure of personal property liens. [1927 c 165 § 24; RRS § 3133. Prior: See Reviser's note to RCW 16.44.020.]

*Reviser's note: "this act," see note following RCW 16.36.010.

16.44.090 Expense—Lien—Foreclosure. The expenses of inspection, feeding, holding, dipping, treating and taking of all sheep inspected, quarantined, dipped or otherwise treated under the provisions of *this act, must be paid by the owner of such sheep and such charge shall be a lien upon such sheep for such charges and expenses, which lien shall be prior and paramount to any and all other liens, demands or other claims against such sheep, and the director of agriculture, the supervisor and inspectors of the division of dairy and livestock and the officers of the United States bureau of animal industry may retain possession of such sheep until such charges and expenses have been paid. Such liens shall be enforced at any time after ten days from the date when such charge shall be incurred and shall not be dependent upon possession of said sheep and may be foreclosed in the name of the state upon the relation of the director of agriculture in the manner provided by law for the foreclosure of other liens upon personal property; or in lieu of foreclosing such lien the director of agriculture may bring an action in the name of the state upon his relation in any court of competent jurisdiction to recover the amount of such charges and expenses: *Provided, however,* That no charge shall be made for the personal services of any officer performed in the enforcement of the provisions of *this act in relation to the prevention and eradication of diseases of sheep. [1927 c 165 § 29; RRS § 3138. Prior: See Reviser's note to RCW 16.44.020. FORMER PART OF SECTION: 1927 c 165 § 16, part; RRS § 3125, part, now codified in RCW 16.44.020.]

*Reviser's note: "this act," see note following RCW 16.36.010.

Expenses of herding, feeding and caring for sheep quarantined paid by owner: RCW 16.44.020.

16.44.110 Importing sheep—Inspection—Penalty. It shall be the duty of every person, persons, firm or corporation, their agents or employees who shall drive or herd or cause to be driven or herded, or bring or cause to be brought, by railroad or trail into this state

from any other state, territory or foreign country, any sheep, to immediately upon crossing the state line and before proceeding into the state a distance greater than two miles, to make written application to the director of agriculture, or his nearest qualified representative, for the inspection of said sheep which application shall be delivered in person or by telegraph or telephone or registered letter. The application must state the time and place when and where the said sheep crossed the line, the locality from which they came, the name and residence of the owner or owners thereof, and of the person in control of the same, and the number, brands and character of the animals. The director of agriculture or his duly authorized representative on receiving such application shall at once proceed, either by himself or his duly authorized representative to inspect said sheep, and if upon inspection the officer making the inspection shall deem it necessary to prevent or avoid infection, shall cause said sheep to be quarantined not more than three miles from where they entered the state for such period as may be necessary, not to exceed thirty days, and if the officer shall deem it necessary he shall cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine. It shall be the duty of any person, persons, firm or corporation, their agents or employees, who shall ship into this state by railroad or steamboat from any other state, territory or foreign country any sheep, immediately upon unloading the same at any point within this state, to notify personally or by telegraph, telephone or registered letter the director of agriculture, and thereupon the director shall cause said sheep to be inspected, and if upon inspection the officer shall deem it necessary to prevent or avoid infection he shall cause said sheep to be quarantined not more than three miles from the point where they were unloaded for such period not exceeding thirty days as he may deem necessary and may cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine: *Provided,* That this section shall not apply to sheep en route through the state on railroad trains or boat lines to other states: *And provided further,* That any sheep held in quarantine under the provisions of this section may be released therefrom by the officer imposing the quarantine at any time for the purpose of immediate slaughter: *And provided further,* That if in the opinion of the director of agriculture it is unnecessary to inspect sheep coming into this state from certain districts or localities in other states, territories or foreign countries he may issue an order dispensing with such inspection and restriction. Any person, persons, firm or corporation violating or failing to comply with any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars and such fine shall be a lien upon the sheep and may be foreclosed in the manner provided by law for the foreclosure of personal property liens, or may be enforced by judgment against the offending party. [1927 c 165 § 23; RRS § 3132. Prior: See Reviser's note to RCW 16.44.020.]

16.44.120 Importing infected sheep—Disinfecting places, boats and cars—Authority to enforce—Penalties. Any person, persons, firm or corporation who shall drive or cause to be driven, bring or cause to be brought, ship or cause to be shipped into this state from any other state, territory or foreign country, any sheep infected with scabies or other contagious, infectious or communicable disease knowing the same to be so infected shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than one thousand dollars, and in case the offending party is a corporation its officers shall be liable in the same manner as individuals would be liable. Any transportation company which shall convey from point to point within this state any sheep infected with scabies or any other contagious, infectious or communicable disease, knowing the same to be so infected, shall be deemed guilty of a misdemeanor and shall be punished as in this section above provided. It shall be the duty of such transportation company whose corrals, guards, pens, sheds, chutes, cars or boats shall have been occupied by infected sheep to within forty-eight hours after the same have been so occupied cause the same to be disinfected in accordance with the rules of the United States bureau of animal industry relating to the disinfection of places, boats and cars and any transportation company who shall fail or neglect to cause such disinfection shall be deemed guilty of a misdemeanor and punished as in this section above provided and the director of agriculture, his duly authorized representative, and the officers of the United States bureau of animal industry shall each have authority to enforce the provisions of this section relating to disinfection and in case such transportation company fails or neglects for a period of forty-eight hours to so disinfect such cars, guards, pens, sheds, chutes or boats the officials may take possession of the same, and proceed to disinfect them at the expense of such company, such expense to be recovered in an action in the name of the state upon relation of the director of agriculture in any court of competent jurisdiction. [1927 c 165 § 25; RRS § 3134. Prior: See Reviser's note to RCW 16.44.020.]

16.44.130 Sale of infected sheep—Penalty. It shall be unlawful for any person, firm or corporation to sell, exchange, give away or in any manner part with to another, any sheep infected with any contagious or infectious or communicable disease, or any sheep which has, or which the owner or his agent or employee or the person in charge thereof, has reason to believe has, within thirty days next preceding such transfer been exposed to any contagious, infectious or communicable disease, without first notifying the person, firm or corporation to whom such sheep is transferred that it is so infected, or that it has been so exposed, and every person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 26; RRS § 3135. Prior: See Reviser's note to RCW 16.44.020.]

16.44.140 Duty to report infection—Penalty. It shall be the duty of any person, persons, firm or corporation owning or having in his or their control any sheep which have become infected with scabies or any other contagious, infectious or communicable disease or which have been exposed in any manner to such disease, to immediately report the same to the director of agriculture by registered letter, telegraph, telephone or in person within ten days after said condition has come to his or their knowledge and any person, persons, firm or corporation failing so to do or attempting to conceal the existence of any such disease, or wilfully obstructing or hindering the director of agriculture or the supervisor or any inspector of the division of dairy and livestock or any officer of the United States bureau of animal industry in the discharge of his or their duties under the provisions of *this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 28; RRS § 3137. Prior: See Reviser's note to RCW 16.44.020.]

*Reviser's note: "this act," see note following RCW 16.36.010.

16.44.150 Duty of officials to exercise care—Penalty. It shall be the duty of the director of agriculture and the supervisor and veterinarians and inspectors of the division of dairy and livestock acting under the provisions of *this act, to use every precaution to protect the sheep under their care from injury, and to select proper places for quarantining and dipping, and to enforce quarantine regulations in such manner as to make the expenses as light as possible upon the owner, consistent with public interest; and any such officer who by virtue of any power conferred upon him under *this act, wilfully oppresses, wrongs or injures any person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [1927 c 165 § 31; RRS § 3140. Prior: See Reviser's note to RCW 16.44.020.]

*Reviser's note: "this act," see note following RCW 16.36.010.

16.44.160 Negligence of owner of infected stock—Liability. Whenever any sheep affected with scabies or any other contagious, infectious or communicable disease shall mingle with any healthy animals belonging to another, through the fault or negligence of the owner of said diseased sheep, his agent or employees, such owner shall be liable in any action at law for all damages sustained by the owner of such healthy sheep. [1927 c 165 § 32; RRS § 3141. Prior: See Reviser's note to RCW 16.44.020.]

16.44.180 Penalty. Every person who shall violate or fail to comply with any of the provisions of this chapter for which violation or failure to comply no specific penalty is provided in this chapter shall be deemed guilty of a misdemeanor. [1957 c 22 § 7. Prior: 1927 c 165 § 33; RRS § 3142; see Reviser's note to RCW 16.44.020 for prior laws.]

Chapter 16.46
DISEASES OF POULTRY

Sections

16.46.010	Poultry disease diagnostic facilities—Purpose.
16.46.020	Poultry disease diagnostic facilities—Appropriation for construction, repairs, and equipment.
16.46.030	Poultry disease diagnostic facilities—Poultry industry to contribute funds before appropriation utilized—Joint depository—Use of funds.

Implied warranty not applying to livestock as free from disease: RCW 62A.2-316.

16.46.010 Poultry disease diagnostic facilities—

Purpose. Whereas, poultry production comprises one of the largest state agricultural industries; whereas, epidemic poultry diseases constitute a serious menace to the welfare of the people; whereas, present facilities for diagnosis and control of poultry diseases are not adequate; and whereas, the poultry industry has offered a sum constituting approximately one-third of the cost needed for establishment of adequate poultry disease diagnostic facilities.

Therefore, construction and equipping of poultry disease diagnostic laboratories is a subject of general interest and concern, which requires appropriate action by the legislature.

Therefore, the state exercising herein its police and sovereign power, endeavors by RCW 16.46.010 through 16.46.030 to remedy the further spread of epidemic poultry diseases by providing for establishment of sufficient diagnostic facilities.

Therefore, the legislature declares that in its considered judgment, the public good and general welfare of the citizens of this state require the enactment of this measure. [1955 c 349 § 1.]

16.46.020 Poultry disease diagnostic facilities—

Appropriation for construction, repairs, and equipment. For the biennium ending June 30, 1957, there is appropriated to the Washington State University from the general fund the sum of sixty thousand dollars, or as much thereof as may be necessary, to carry out the purposes of RCW 16.46.010 through 16.46.030.

(1) Forty-five thousand dollars of the amount appropriated shall be allocated for the construction of a poultry disease diagnostic laboratory at the Western Washington experiment station at Puyallup.

(2) Fifteen thousand dollars of the amount appropriated shall be allocated for major repairs and betterments and the equipping of poultry disease diagnostic laboratories at the Northwestern Washington experiment station at Mount Vernon and at the Southwestern Washington experiment station at Vancouver. [1957 c 55 § 1; 1955 c 349 § 2.]

16.46.030 Poultry disease diagnostic facilities—Poultry industry to contribute funds before appropriation utilized—Joint depository—Use of funds. No portion of the sums allocated in subdivisions (1) and (2) of RCW 16.46.020 shall be expended, until the Washington state poultry industry pledged contribution

of thirty-five thousand dollars has been deposited, in a joint depository selected by the Washington State University and the Washington state poultry industry.

All payments from the joint depository shall be made only:

(1) On vouchers signed by duly authorized representatives of the Washington State University and the Washington state poultry industry; and

(2) For construction and betterments and for the equipping of the poultry disease diagnostic laboratory at Western Washington experiment station at Puyallup. [1957 c 55 § 2; 1955 c 349 § 3.]

Chapter 16.48
SLAUGHTERING AND TRANSPORTING
LIVESTOCK

Sections

16.48.120	Disposition of fees.
16.48.280	Right of entry by inspectors.
16.48.310	Rules and regulations—1937 act.
16.48.311	Rules and regulations—1939 and 1945 acts.
16.48.312	Rules and regulations—1949 act.
16.48.320	Penalties—1939 and 1937 acts.
16.48.325	Penalties—1949 act.

16.48.120 Disposition of fees. Funds collected for license fees and inspection fees shall be retained by the director of agriculture to be used for the enforcement of *this act, chapter 75, Laws of 1937 and chapter 198, Laws of 1939. [1945 c 161 § 6; Rem. Supp. 1945 § 3169-25.]

*Reviser's note: (1) "this act" (1945 c 161) was codified as RCW 16.48.050, 16.48.080, 16.48.090, 16.48.100 through 16.48.120, 16.48.140, 16.48.210 through 16.48.250 and 16.48.312.

(2) Chapter 75, Laws of 1937 was codified as RCW 16.48.011 through 16.48.040, 16.48.130, 16.48.160 through 16.48.170, 16.48.190, 16.48.260, 16.48.310 and 16.48.320.

(3) Chapter 198, Laws of 1939 was codified as RCW 16.48.130, 16.48.170, 16.48.180, 16.48.200 and 16.48.320.

16.48.280 Right of entry by inspectors. Inspectors or agents employed by the director shall have the right to enter, during business hours, any meat shop, restaurant or refrigerated locker plant, or any other place where meat is commercially stored or sold to make inspections of carcasses and to examine the books and records required by law to be kept therein and to compare the carcasses with such records. [1949 c 98 § 13; Rem. Supp. 1949 § 3055-18.]

16.48.310 Rules and regulations—1937 act. The director of agriculture is hereby authorized to make and promulgate rules and regulations for the enforcement of *this act but no such rules and regulations shall be inconsistent with the provisions herein prescribed. [1937 c 75 § 16; RRS § 3169-16. FORMER PARTS OF ACT: (i) 1949 c 98 § 17; Rem. Supp. § 3055-21, now codified in RCW 16.48.311. (ii) 1945 c 161 § 14; Rem. Supp. 1945 § 3169-33, now codified in RCW 16.48.312.]

*Reviser's note: "this act," see note following RCW 16.48.120.

16.48.311 Rules and regulations—1939 and 1945 acts. The director of agriculture is authorized and shall make such regulations as may be necessary to effectuate the provisions of *this act and the provisions of chapter 198, Laws of 1939: *Provided*, That such regulations shall be consistent with the provisions of *this act and of chapter 198, Laws of 1939. [1945 c 161 § 14; Rem. Supp. 1945 § 3169–33. Formerly RCW 16.48.300, part.]

***Reviser's note:** "this act and ... chapter 198, Laws of 1939," see note following RCW 16.48.120.

16.48.312 Rules and regulations—1949 act. The director of agriculture is authorized to make and promulgate rules and regulations for the enforcement of *this act but no such rules and regulations shall be inconsistent with the provisions herein prescribed. [1949 c 98 § 17; Rem. Supp. 1949 § 3055–21. Formerly RCW 16.48.310, part.]

***Reviser's note:** "this act" (1949 c 98) was codified as RCW 16.48-.010, 16.48.040, 16.48.130, 16.48.150 through 16.48.160, 16.48.180, 16.48.270 through 16.48.300, 16.48.311, 16.48.325, 16.56.040, 16.56-.120, 16.56.125, 16.64.020 and 16.64.040.

16.48.320 Penalties—1939 and 1937 acts. Any person or persons found guilty of violating any of the provisions of *this act and of chapter 156 of the Session Laws of 1935 shall be punished as prescribed by law for such offense and any person or persons who shall fail to perform any of the mandatory duties required by these acts shall be guilty of a misdemeanor. [1939 c 198 § 6; 1937 c 75 § 15; RRS § 3169–15. FORMER PART OF SECTION: 1949 c 98 § 18; Rem. Supp. 1949 § 3055–22, now codified in RCW 16.48.325.]

***Reviser's note:** "this act," see note following RCW 16.48.120; "chapter 156 of the Session Laws of 1935" was codified in chapter 16-.59 RCW, later repealed by 1959 c 54 § 39.

16.48.325 Penalties—1949 act. Violations of *this act, not otherwise provided for, shall be a misdemeanor. [1949 c 98 § 18; Rem. Supp. 1949 § 3055–22. Formerly RCW 16.48.300, part.]

***Reviser's note:** "this act," see note following RCW 16.48.312.

**Chapter 16.49
CUSTOM SLAUGHTERING**

Sections	
16.49.435	Definitions.
16.49.440	Custom slaughtering and custom meat licenses—Is- suanee—Annual fee—Equipment inspection.
16.49.441	Custom farm slaughterers—Preliminary inspections.
16.49.442	Additional fee for late renewal—Exception.
16.49.444	Denial, suspension, revocation of license—Grounds.
16.49.451	Custom farm slaughterer—Transport of offal.
16.49.454	Limited custom slaughtering license for slaughtering livestock owned by consumer for own use—Hearing.
16.49.500	Washington State University laboratories exemp- tion—Inspection, stamping.
16.49.510	Penalty.
16.49.610	Custom meat facilities—Conditions for preparation of inspected and uninspected meat and sale of inspected meat.

16.49.630	Custom meat facilities—License—Required— Application, contents—Fee—Expiration.
16.49.635	Custom meat facilities—Preliminary inspections.
16.49.670	Custom meat facilities—Ordinances may be more restrictive.
16.49.680	Rules.
16.49.690	Inspections.
16.49.700	Uninspected meat or meat food products—Unlawful to sell, trade, or give away—Revocation of license for violation.
16.49.710	Violations of chapter or rules—Investigation by direc- tor—Subpoenas.

16.49.435 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agricul-
ture of the state of Washington.

(2) "Director" means the director of the department
or the director's designee.

(3) "Custom farm slaughterer" means any person li-
censed under this chapter who may under such license
engage in the business of slaughtering meat food animals
only for the consumption of the owner thereof through
the use of an approved mobile unit under such conditions
as may be prescribed by the director.

(4) "Custom slaughtering establishment" means the
facility operated by any person licensed under this chap-
ter who may under such license engage in the business of
slaughtering meat food animals only for the consump-
tion of the owner thereof at a fixed location under such
conditions as may be prescribed by the director.

(5) "Custom meat facility" means the facility oper-
ated by any person licensed under this chapter who may
under such license engage in the business of preparing
uninspected meat for the sole consumption of the owner
of the uninspected meat being prepared. Operators of
custom meat facilities may also prepare inspected meat
for household users only under such conditions as may
be prescribed by the director and may sell such prepared
inspected meat to household users only. Operators of
custom meat facilities may also sell prepackaged in-
spected meat to any person, provided the prepackaged
inspected meat is not prepared in any manner by the
operator and the operator does not open or alter the
original package that the inspected meat was placed in.

(6) "Inspected meat" means the carcasses or parts
thereof of meat food animals which have been slaugh-
tered and inspected at establishments subject to inspec-
tion under chapter 16.49A RCW or a federal meat
inspection act.

(7) "Uninspected meat" means the carcasses or parts
thereof of meat food animals which have been slaugh-
tered by the owner thereof, or which have been slaugh-
tered by a custom farm slaughterer.

(8) "Household user" means the ultimate consumer,
the members of the consumer's household, and his or her
nonpaying guests and employees.

(9) "Person" means any natural person, firm, part-
nership, exchange, association, trustee, receiver, corpo-
ration, and any member, officer, or employee thereof or
assignee for the benefit of creditors.

(10) "Meat food animal" means cattle, swine, sheep,
or goats.

(11) "Official establishment" means an establishment operated for the purpose of slaughtering meat food animals for sale or use as human food in compliance with the federal meat inspection act (21 U.S.C. Sec. 71 et seq.).

(12) "Prepared" means canned, salted, rendered, boned, cut up or otherwise manufactured, or processed. [1987 c 77 § 4.]

Savings—1987 c 77: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, and does not affect any proceeding instituted under those sections." [1987 c 77 § 12.]

16.49.440 Custom slaughtering and custom meat licenses—Issuance—Annual fee—Equipment inspection. It shall be unlawful for any person to act as a custom farm slaughterer or to operate a custom slaughtering establishment or custom meat facility without first obtaining a license from the director. The license shall be an annual license and shall expire on June 30th of each year. For custom farm slaughterers, a separate license shall be required for each mobile unit. Each custom slaughtering establishment and custom meat facility shall also require a separate license. Application for a license shall be made on a form prescribed by the director of agriculture and accompanied by a twenty-five dollar annual license fee. The application shall include the full name and address of the applicant. If the applicant is a partnership or corporation, the application shall include the full name and address of each partner or officer. The application shall further state the principal business address of the applicant in the state or elsewhere and the name of a resident of 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 of agriculture. The license shall be issued by the director upon his satisfaction that the applicant's equipment is properly constructed, has the proper sanitary and mechanical equipment and is maintained in a sanitary manner as required under this chapter and/or rules adopted hereunder. The director of agriculture shall also provide for the periodic inspection of equipment used by licensees to assure compliance with the provisions of this chapter and the rules adopted hereunder. [1987 c 77 § 1; 1985 c 415 § 5; 1959 c 204 § 44.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.441 Custom farm slaughterers—Preliminary inspections. Before issuing any license to operate as a custom farm slaughterer, the director shall inspect the applicant's mobile unit and slaughtering equipment and only upon the director's satisfaction that the applicant's mobile unit and equipment is properly constructed, has the proper sanitary and mechanical equipment, and is capable of being maintained in a sanitary manner as required under this chapter and the rules adopted hereunder shall the applicant be issued a license. [1987 c 77 § 6.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.442 Additional fee for late renewal—
Exception. If the application for the renewal of any license provided for under this chapter is not filed prior to July 1st in any year, an additional fee of twenty-five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That the additional fee shall not be charged if the applicant furnishes an affidavit certifying that the applicant has not carried on the activity for which the applicant was licensed under this chapter subsequent to the expiration of the applicant's license. [1985 c 415 § 11.]

16.49.444 Denial, suspension, revocation of license—Grounds. The director of agriculture may, subsequent to a hearing under chapter 34.04 RCW, deny, suspend, or revoke any license required under this chapter if it is determined that an applicant has committed any of the following acts:

- (1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the department of agriculture;
- (2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested under this chapter; or
- (3) Refused the director of agriculture access to any facilities or parts of the facilities subject to this chapter. [1985 c 415 § 12.]

16.49.451 Custom farm slaughterer—Transport of offal. Notwithstanding any other provisions of the law, any custom farm slaughterer may, without the need for any other license, transport the offal of a meat food animal he has slaughtered for the owner thereof, when such offal is transported as a part of such slaughtering transaction and such offal is handled in a sanitary, suitable container and manner as provided by the director. [1967 ex.s. c 120 § 4.]

16.49.454 Limited custom slaughtering license for slaughtering livestock owned by consumer for own use—Hearing. No person shall operate a custom slaughtering establishment without first establishing the need for such an establishment. In addition to the requirements under RCW 16.49.440, applications to operate custom slaughtering establishments shall contain the following:

- (1) The location of the facility to be used.
- (2) The day or days of intended operation.
- (3) The distance to the closest official establishment.
- (4) Whether the facility already exists or is to be constructed.
- (5) Any other matters that the director may require.

Upon receipt of such application the director shall provide for a hearing to be held in the area where the applicant intends to operate a custom slaughtering establishment. Such hearing shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning contested cases. Upon the director's

determination that such a custom slaughtering establishment is necessary in the area applied for and that the applicant has satisfied all other requirements of this chapter relating to custom slaughtering establishments including minimum facility requirements as prescribed by the director, the director shall issue a limited license to such applicant to operate such an establishment. When and if an official establishment is located and operated in the area, the director may deny renewal of the limited license subject to a hearing. [1987 c 77 § 2; 1961 c 91 § 2.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.500 Washington State University laboratories exemption—Inspection, stamping. For the purpose of carrying out its teaching, research, and extension programs, the Washington State University meats laboratory(s) shall be exempt from the licensing provisions of this chapter and shall be issued an official establishment number and stamp. Such slaughter operations shall be conducted under inspection, as provided in this chapter, by a qualified inspector under veterinary supervision by the college of veterinary medicine of the Washington State University. Meat animals slaughtered in the laboratory(s) shall bear the stamp "Inspected and Passed". [1959 c 204 § 50.]

16.49.510 Penalty. The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a gross misdemeanor. [1985 c 415 § 6; 1959 c 204 § 51.]

16.49.610 Custom meat facilities—Conditions for preparation of inspected and uninspected meat and sale of inspected meat. Inspected and uninspected meat may only be prepared by a custom meat facility under the following conditions:

(1) Inspected meat and the meat and meat food products prepared therefrom shall be separated at all times from uninspected meat and the meat food products prepared therefrom, by a sufficient distance to prevent inspected meat from coming into contact with uninspected meat.

(2) Preparation of inspected meat and uninspected meat shall be done at different times.

(3) No sales of inspected meat, nor the meat food products derived therefrom shall be made to any person other than a household user.

(4) Uninspected meat shall be prepared for the sole use of the owner of said uninspected meat, who shall be a household user.

(5) Inspected meat may be purchased by a custom meat facility for preparation and sale to a household user only.

(6) Uninspected meat, as well as the packages and containers containing any meat or meat food products prepared therefrom shall be plainly marked and labeled "not for sale" or as otherwise prescribed by the director.

(7) Any custom meat facility shall comply with sanitation rules and regulations promulgated by the director. [1987 c 77 § 3; 1985 c 415 § 7; 1971 ex.s. c 98 § 3.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.630 Custom meat facilities—License—Required—Application, contents—Fee—Expiration. It shall be unlawful for any person to operate a custom meat facility without first obtaining an annual license from the department of agriculture. Application for such license shall be on a form prescribed by the department and accompanied by a twenty-five dollar license fee. Such application shall include the full name of the applicant, if such applicant is an individual, receiver, or trustee; and the full name of each member of the firm or the names of the officers of the corporation if such applicant is a firm or corporation. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of the person domiciled in this state authorized to receive and accept service of legal process of all kinds for the applicant, and the applicant shall supply any other information required by the department. All custom meat facility licenses shall expire on June 30th of each year. [1971 ex.s. c 98 § 5.]

16.49.635 Custom meat facilities—Preliminary inspections. Before issuing any license to operate a custom meat facility, the director shall inspect the applicant's premises and only upon the director's satisfaction that the applicant's facility and equipment is properly constructed, has the proper sanitary and mechanical equipment, and is capable of being maintained in a sanitary manner as required under this chapter and the rules adopted hereunder shall the applicant be issued a license. [1987 c 77 § 7.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.670 Custom meat facilities—Ordinances may be more restrictive. The provisions of this chapter relating to custom meat facilities and RCW 16.49A.370 shall in no way supersede or restrict the authority of any county or any city to adopt ordinances which are more restrictive for the handling of meat than those provided for herein. [1987 c 77 § 11; 1971 ex.s. c 98 § 9.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.680 Rules. To ensure the sanitary slaughtering of meat food animals and handling of meat and meat food products by licensees under this chapter, the director may adopt such rules as the director finds necessary to protect public health and safety. To ensure the identification of meat food animals slaughtered by licensees and the meat and meat food products handled by licensees, both as to ownership and as to whether the product is uninspected meat or inspected meat, the director may adopt such rules as the director finds necessary. The director may also adopt such other rules as the director finds necessary to carry out this chapter. [1987 c 77 § 5.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.690 Inspections. To ensure that licensees under this chapter maintain proper sanitary practices and

comply with all the provisions of this chapter and the rules adopted hereunder, the director may inspect the mobile unit of any custom farm slaughterer and the premises of any custom slaughtering establishment or custom meat facility at any reasonable time. No person may interfere with the director in the performance of his or her duties under this chapter or the rules adopted hereunder. [1987 c 77 § 8.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.700 Uninspected meat or meat food products—Unlawful to sell, trade, or give away—Revocation of license for violation. It is unlawful for any person to sell, trade, or give away uninspected meat or the meat food products that may be derived therefrom. Any violation of this section by a licensee under this chapter shall be sufficient reason for the revocation of the licensee's license. [1987 c 77 § 9.]

Savings—1987 c 77: See note following RCW 16.49.435.

16.49.710 Violations of chapter or rules—Investigation by director—Subpoenas. The director may investigate any violation or possible violation of this chapter or any rule adopted under this chapter. In the furtherance of any such investigation, the director may issue subpoenas to compel the attendance of witnesses or the production of books or documents anywhere in the state. [1987 c 77 § 10.]

Savings—1987 c 77: See note following RCW 16.49.435.

Chapter 16.49A

WASHINGTON MEAT INSPECTION ACT

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16.49A.010 Short title. This chapter may be known and cited as the "Washington meat inspection act". [1969 ex.s. c 145 § 1.]

16.49A.020 Declaration of purpose. The purposes of this chapter are to adopt new legislation governing meat and meat food products and to promote uniformity of state legislation with the federal meat inspection act. Meat and meat food products are an important source of the state's total supply of food. They are consumed

throughout the state and the major portion thereof moves in intrastate commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Meat and meat food products not reaching these standards are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and animals which are regulated under this chapter substantially affect the public and that regulation by the director as contemplated by this chapter is appropriate to protect the health and welfare of consumers. [1969 ex.s. c 145 § 2.]

16.49A.030 Definitions govern construction. Unless the context otherwise requires, the definitions in RCW 16.49A.040 through 16.49A.250 govern the construction of this chapter. [1969 ex.s. c 145 § 3.]

16.49A.040 "Department". "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 145 § 4.]

16.49A.050 "Director". "Director" means the director of the department of agriculture or his duly authorized representative. [1969 ex.s. c 145 § 5.]

16.49A.060 "Person". "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. [1969 ex.s. c 145 § 6.]

16.49A.070 "Consumer". "Consumer" means an ultimate consumer or any facility such as a restaurant, boarding house, institution or catering service which prepares food for immediate consumption by the consumer on the premises where it is prepared or elsewhere. [1969 ex.s. c 145 § 7.]

16.49A.080 "Retail meat dealer". "Retail meat dealer" means any person who handles or prepares meat for the purpose of sale to consumers. [1969 ex.s. c 145 § 8.]

16.49A.090 "Wholesale meat dealer". "Wholesale meat dealer" means any person who prepares or handles meat for distribution or sale to any retail meat dealer or consumer, including any distribution facility owned or controlled by one or more retail meat dealers used for preparing meat or distributing meat to any such retail meat dealer or consumer. [1969 ex.s. c 145 § 9.]

16.49A.100 "Prepared". "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed. [1969 ex.s. c 145 § 10.]

16.49A.110 "Governmental unit". "Governmental unit" means any governmental unit, agency, or political subdivision including cities, towns and counties which may be formed under the laws of the state of Washington. [1969 ex.s. c 145 § 11.]

16.49A.120 "Animal food manufacturer". "Animal food manufacturer" means any person processing animal food derived wholly or in part from carcasses or parts or products of the carcasses of meat food animals. [1969 ex.s. c 145 § 12.]

16.49A.130 "Meat food product". "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or any other portion of the carcass of any meat food animal, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the director under such conditions as he may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as it applies to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to meat food animals. [1969 ex.s. c 145 § 13.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

16.49A.140 "Meat food animal". "Meat food animal" means cattle, sheep, swine, goats, horses or any other animal capable of use as a human food. [1969 ex.s. c 145 § 14.]

16.49A.150 "Capable of use as human food". "Capable of use as human food" means any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the director to deter its use as human food, or unless it is naturally inedible by humans. [1969 ex.s. c 145 § 15.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

16.49A.160 "Adulterated". "Adulterated" means any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) 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;

(2) If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity, (b) a food additive, or (c) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(3) 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;

(4) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394;

(5) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396: *Provided*, That an article which is not adulterated under subsection (2), (3) or (4) 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 establishments at which inspection is maintained under this chapter;

(6) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(7) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(8) If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(10) 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;

(11) 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; or

(12) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance. [1969 ex.s. c 145 § 16.]

Color additives: RCW 69.04.396.

Food additives: RCW 69.04.394.

Pesticide chemicals in or on raw agricultural commodities: RCW 69.04.392.

16.49A.170 "Misbranded". "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in a package or other container unless it bears a label showing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (b) of this subsection (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the director;

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the director under RCW 16.49A.300(3) unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the director under RCW 16.49A.300(3), unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of subsection (7), unless its label bears (a) the common or usual name of the food, if any there be, and (b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the director, be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (b) of this subsection (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director;

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as prescribed by the director;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That, to the extent that compliance with the requirements of this subsection

(11) is impracticable, exemptions shall be established by regulations promulgated by the director; or

(12) If it fails to bear directly thereon, or on its container as the director may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the director may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. [1969 ex.s. c 145 § 17.]

16.49A.180 "Label". "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article. [1969 ex.s. c 145 § 18.]

16.49A.190 "Labeling". "Labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1969 ex.s. c 145 § 19.]

16.49A.200 "Uniform Washington food, drug, and cosmetic act". "Uniform Washington food, drug, and cosmetic act" means chapter 69.04 RCW as enacted or hereafter amended. [1969 ex.s. c 145 § 20.]

16.49A.210 "Pesticide chemical", "food additive", "color additive", "raw agricultural commodity". "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the uniform Washington food, drug, and cosmetic act. [1969 ex.s. c 145 § 21.]

16.49A.220 "Official mark". "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article or animal under this chapter. [1969 ex.s. c 145 § 22.]

16.49A.230 "Official inspection legend". "Official inspection legend" means any symbol prescribed by regulations of the director showing that an article was inspected and passed in accordance with this chapter. [1969 ex.s. c 145 § 23.]

16.49A.240 "Official certificate". "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. [1969 ex.s. c 145 § 24.]

16.49A.250 "Official device". "Official device" means any device prescribed or authorized by the director for use in applying any official mark. [1969 ex.s. c 145 § 25.]

16.49A.255 "Intrastate commerce". "Intrastate commerce" means any article in intrastate commerce whether such article is alive or processed and is 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 to consumers in this state whether at wholesale or retail. [1969 ex.s. c 145 § 67.]

16.49A.260 Examination of animals before entry into slaughtering establishment—Disposition of diseased animals. For purposes set forth in RCW 16.49A.020, the director shall cause inspections and examinations of all meat animals for disease before they shall be allowed to enter into any slaughtering, packing, meat-canning, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in intrastate commerce; and all meat food animals found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other meat food animals, and when so slaughtered the carcasses of meat food animals shall be subject to careful examination and inspection, as provided by the rules and regulations adopted by the director under the provisions of this chapter. [1969 ex.s. c 145 § 26.]

16.49A.270 Examination and inspection of carcasses—Marking—Destruction of adulterated carcasses—Reinspection—Removal of inspectors, when. For purposes set forth in RCW 16.49A.020, the director shall cause a post mortem examination and inspection of the carcasses and parts thereof of all meat food animals to be prepared at any slaughtering, meat-canning, salting, packing, or similar establishments in this state as articles of intrastate commerce, which are capable of use as human food. The carcasses and parts thereof of such meat food animals found to be not adulterated shall, by the inspectors be marked, stamped, tagged or labeled as "Inspected and passed." The said inspectors shall label, mark, stamp or tag as "Inspected and condemned" all carcasses and parts thereof of meat food animals found to be adulterated. All carcasses and parts thereof of meat food animals found to be adulterated, and all carcasses and parts thereof thus inspected shall be destroyed for food purposes by the said establishment in the presence of an inspector. The director may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof. The inspectors shall reinspect the carcasses or part thereof when they deem it necessary to determine whether the carcasses or part thereof have become adulterated since the first inspection. If any carcass or parts thereof shall upon examination and inspection subsequent to the first examination, be found to be adulterated, it shall be destroyed for food purposes by said establishment in the presence of an inspector, and the director may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof. [1969 ex.s. c 145 § 27.]

16.49A.280 Application of foregoing provisions—Director may limit entry of articles into establishments. The foregoing provisions shall apply to all carcasses or parts of carcasses of meat food animals, or the meat or meat products thereof which may be brought into any slaughtering, meat-canning, salting, packing, or similar

establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products, which, after having been issued from any slaughtering, meat-canning, salting, packing, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The director may limit the entry of carcasses, parts of carcasses, meat food products and other materials into any establishment at which inspection under this chapter is maintained, under conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishment will be consistent with the purposes of this chapter. [1969 ex.s. c 145 § 28.]

16.49A.290 Inspection of meat food products—Marking—Destruction of adulterated products. For the purposes hereinbefore set forth the director shall cause to be made, by inspectors employed for that purpose, an examination and inspection of all meat food products prepared for sale or use in any slaughtering, meat-canning, salting, packing, or similar establishment, and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "Inspected and passed" all such products found not adulterated; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the director may remove inspectors from any establishment which fails to destroy such condemned meat food products. [1969 ex.s. c 145 § 29.]

16.49A.300 Containers, closing or sealing—Labeling requirements—False or misleading labels—Hearing—Appeal from director's determination. (1) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "Inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under the supervision of an inspector, which label shall state that the contents thereof have been "Inspected and passed" under the provisions of this chapter and no inspection and examination of meat or meat food products deposited or enclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this chapter is maintained shall be deemed to be complete until such meat or meat food products have been sealed or enclosed in said

can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(2) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this chapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the director may require, the information required under RCW 16.49A.170.

(3) The director, whenever he determines such action is necessary for the protection of the public, may prescribe: (a) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marketing and labeling any articles or meat food animals subject to this chapter; (b) definitions and standards of identity or composition for articles not inconsistent with any such standards established under the uniform Washington food, drug and cosmetic act.

(4) No article subject to this chapter shall be sold or offered for sale by any person, firm, or corporation, in this state, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the director are permitted.

(5) If the director has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this chapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the superior court in the county in which such person, firm, or corporation has its principal place of business, or to the superior court of Thurston county. [1969 ex.s. c 145 § 30.]

Bacon, packaging at retail to reveal quality and leanness: RCW 69.04-.205 through 69.04.207.

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

16.49A.310 Inspection of establishments for sanitary conditions—Rules and regulations to maintain. The director shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection of slaughtering, meat-canning, salting, packing, or similar establishments in which meat food animals are slaughtered and the meat and meat food products thereof are prepared for sale or use in this state as may be necessary

to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "Inspected and passed." [1969 ex.s. c 145 § 31.]

16.49A.320 Inspections to be made during nighttime as well as daytime. The director shall cause an examination and inspection of all meat food animals and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of sale or use in this state to be made during the nighttime as well as during the daytime when the slaughtering of said meat food animals, or the preparation of said food products is conducted during the nighttime. [1969 ex.s. c 145 § 32.]

16.49A.330 Prohibited practices. No person, firm, or corporation shall, with respect to any meat food animals or any carcasses, parts of carcasses, meat or meat food products of any such animals—

(1) Slaughter any such meat food animals or prepare any such articles which are capable of use as human food at any establishment preparing any such articles for sale or use in this state, except in compliance with the requirements of this chapter or the federal meat inspection act (21 USC 71 et seq.);

(2) Sell, knowingly transport, offer for sale, or knowingly offer for transportation, or knowingly receive for transportation, in intrastate commerce, (a) any such articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (b) any articles required to be inspected under this chapter or the federal meat inspection act (21 USC 71 et seq.) unless they have been so inspected and passed; or

(3) Do, with respect to any such articles which are capable of use as human food any act, knowingly while they are being transported in intrastate commerce, or while held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. [1969 ex.s. c 145 § 33.]

16.49A.340 Unlawful acts as to official devices, labels, certificates, etc. (1) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director.

(2) No person, firm, or corporation shall—

(a) forge any official device, mark, or certificate;

(b) without authorization from the director use any official device, mark, or certificate, or simulation

thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(c) contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(d) knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(e) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director; or

(f) knowingly represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted. [1969 ex.s. c 145 § 34.]

Frozen meat and meat food products—Labeling requirements: RCW 69.04.930.

16.49A.350 Restrictions on sale, transportation, etc., of equine meat or meat products. No person, firm, or corporation shall sell, knowingly transport, offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the director to show the kinds of animals from which they were derived. When required by the director, with respect to establishments at which inspection is maintained under this chapter, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which other meat food animals are slaughtered or their carcasses, parts thereof, meat or meat food products are prepared. [1969 ex.s. c 145 § 35.]

16.49A.360 Bribing inspector or other official—Acceptance of bribe—Penalty. Any person, firm or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of the state authorized to perform any of the duties prescribed by this chapter or by the rules and regulations of the director, any money or other thing of value, with intent to influence said inspector, or other officer or employee of the state in the discharge of any duty provided for in this chapter, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars and by imprisonment for not less than one year nor more than three years; and any inspector, or other officer or employee of the state authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other

thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value, given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged and shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars and by imprisonment for not less than one year nor more than three years. [1969 ex.s. c 145 § 36.]

16.49A.370 Exemptions from inspection requirements. (1) The provisions of this chapter requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations for intrastate commerce shall not apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor to the custom slaughter by any person, firm, or corporation of meat food animals delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees, nor to regularly licensed custom meat facilities.

(2) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection or not required to be inspected under this section. [1971 ex.s. c 98 § 1; 1969 ex.s. c 145 § 37.]

16.49A.380 Director may prescribe regulations for storage and handling of meats and meat food products. The director may by regulations prescribe conditions under which carcasses, parts of carcasses, and meat food products of meat food animals capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, whenever the director deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is an infraction punishable under RCW 16.49A.630. [1969 ex.s. c 145 § 38.]

16.49A.390 Meat food or products for nonhuman consumption—Restrictions. Inspection shall not be provided under this chapter at any establishment for the slaughter of meat food animals or the preparation of any carcasses or parts or products of such animals, which are not intended for use as human food, but such articles

shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the director to deter their use for human food. No person, firm, or corporation shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, meat or meat food products of any such animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the director or are naturally inedible by humans. [1969 ex.s. c 145 § 39.]

16.49A.400 Facilities, records, inventories to be open to inspection and sampling. (1) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses; and all persons, firms, and corporations subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the director, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(a) Any persons, firms, or corporations that engage, for intrastate commerce, in the business of slaughtering any meat food animals, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food;

(b) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers or otherwise), or transporting in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any such animals;

(c) Any persons, firms, or corporations that engage in business, in or for intrastate commerce, as renderers, or engage in the business of buying, selling, or transporting, in intrastate commerce, or importing, any dead, dying, disabled, or diseased meat food animals or parts of the carcasses of any such animals that have died otherwise than by slaughter.

(2) Any record required to be maintained by this chapter shall be maintained for such period of time as the director may by regulations prescribe. [1969 ex.s. c 145 § 40.]

16.49A.410 Designation of time for slaughter for inspection purposes. Whenever the director shall deem it necessary in order to furnish proper, efficient and economical inspection of two or more establishments and the proper inspection of meat food animals or meat, the director, after a hearing on written notice to the licensee of each such establishment affected, may designate days and hours for the slaughter of meat food animals and the preparation or processing of meat at such establishments. The director in making such designation of days

and hours shall give consideration to the existing practices at the affected establishment fixing the time for slaughter of meat food animals and the preparation or processing of meat thereof. [1969 ex.s. c 145 § 41.]

16.49A.420 Disposition of adulterated or misbranded carcass, meat or meat food product when away from preparing establishment—Declared public nuisance. The director, whenever he finds any carcass, part thereof, meat or meat food product subject to the provisions of this chapter away from the establishment where such carcass, part thereof, meat or meat food product was prepared or anywhere in intrastate commerce, that is adulterated or misbranded, shall render such meat or meat food product unsalable or shall order the destruction of such carcass, part thereof, meat or meat food product which are hereby declared to be a public nuisance. [1969 ex.s. c 145 § 42.]

16.49A.430 Adulterated or misbranded products—Embargo. The director may, when he finds or has probable cause to believe that any carcass, part thereof, meat or meat food product subject to the provisions of this chapter which has been or may be introduced into intrastate commerce and such carcass, part thereof, meat or meat food product is so adulterated or misbranded that its embargo is necessary to protect the public from injury, affix on such carcass, part thereof, meat or meat food product a notice of its embargo prohibiting its sale or movement in intrastate commerce without a release from the director. The director shall subsequent to embargo, if he finds that such carcass, part thereof, meat or meat food product is not adulterated or misbranded so as to be in violation of this chapter, remove such embargo forthwith. [1969 ex.s. c 145 § 43.]

16.49A.440 Embargoed products—Petition to superior court—Hearing—Order—Costs. When the director has embargoed any carcass, part thereof, meat or meat food product, he shall petition the superior court of the county in which such carcass, part thereof, meat or meat food product is located without delay and within twenty days for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after a prompt hearing to any claimant of such carcass, part thereof, meat or meat food product, shall issue an order which directs the removal of such embargo or the destruction or the correction and release of such carcass, part thereof, meat or meat food product. An order for destruction or correction and release shall contain such provisions for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond, as the court finds indicated in the circumstance. [1969 ex.s. c 145 § 44.]

16.49A.450 Embargoed products—Claimant may agree to disposition of products without petition to court. The director need not petition the superior court as provided for in RCW 16.49A.440, if the owner or the

claimant of such carcass, part thereof, meat or meat food product agrees in writing to the disposition of such carcass, part thereof, meat or meat food product as the director may order. [1969 ex.s. c 145 § 45.]

16.49A.460 Embargoed products—Consolidation of petitions. Two or more petitions under RCW 16.49A.440, which pend at the same time and which present the same issue and claimant hereunder, may be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1969 ex.s. c 145 § 46.]

16.49A.470 Embargoed products—Claimant entitled to sample of article. The claimant in any proceeding by petition under RCW 16.49A.440 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1969 ex.s. c 145 § 47.]

16.49A.480 Damages from administrative action. No state court shall allow the recovery of damages from administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1969 ex.s. c 145 § 48.]

16.49A.520 Inspectors—Duties. The director shall employ inspectors to make examination and inspection of all meat food animals, the inspection of which is provided for under the provisions of this chapter, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this chapter and by the rules and regulations to be prescribed by the director, and said director shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this chapter, and all inspections and examinations made under this chapter shall be such and made in such manner as described in the rules and regulations prescribed by said director not inconsistent with provisions of this chapter. [1969 ex.s. c 145 § 55.]

16.49A.530 Department's authority to withdraw inspectors from unsanitary establishments. The provisions of RCW 16.49A.270 through 16.49A.290 shall in no way limit the department's authority to forthwith withdraw inspection at any facility or establishment subject to the provisions of this chapter when the department through its inspectors determines that such facility or establishment is unsanitary and that the carcasses or parts thereof, meat or meat food products prepared

therein would be adulterated because of such unsanitary conditions. [1969 ex.s. c 145 § 52.]

16.49A.540 Overtime inspection service—Payment for. Costs for any overtime inspection service requested or required by a license shall be charged to said licensee at the actual cost to the department including supervisor cost. Charges for such overtime inspection shall be due and payable by the licensee to the department by the end of the next business day. The director may withhold inspection at any establishment or facility operated by such licensee until proper payment has been made by the licensee as herein required. The director may further require that payment for overtime costs be made in advance if such licensee does not make proper payment for overtime inspection services. [1969 ex.s. c 145 § 57.]

16.49A.550 Intergovernmental cooperation. The director may in order to carry out the purpose of this chapter enter into agreements with any federal, state or other governmental unit for joint inspection programs or for the receipt of moneys from such federal, state or other governmental units in carrying out the purpose of this chapter. [1969 ex.s. c 145 § 59.]

16.49A.560 Adoption of regulations promulgated under federal meat inspection act. The regulations promulgated under the provisions of the federal meat inspection act (21 USC 601 et seq.) and not in conflict with the provisions of this chapter are hereby adopted as regulations applicable under the provisions of this chapter. [1971 ex.s. c 108 § 1; 1969 ex.s. c 145 § 54.]

16.49A.570 Uniformity of state and federal acts and regulations as purpose—Procedure. The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal meat inspection act 21 USC 601 et seq., and regulations adopted thereunder.

In accord with such purpose any regulations adopted under the federal meat inspection act and published in the federal register shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.04 RCW as enacted or hereafter amended. The director shall, however, within thirty days of the publication of the adoption of any such regulation under the federal meat inspection act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.04 RCW, as enacted or hereafter amended, concerning the adoption of regulations. [1971 ex.s. c 108 § 2; 1969 ex.s. c 145 § 60.]

16.49A.580 Continuation of prior licenses. Any license issued under the provisions of chapter 16.49 RCW and expiring December 31, 1969, shall continue in effect until June 30, 1970, without the need of renewal. [1969 ex.s. c 145 § 58.]

16.49A.590 Disposition of moneys. All moneys received by the department under the provisions of this

chapter shall be paid into the state treasury. [1969 ex.s. c 145 § 61.]

16.49A.600 Exemptions. The provisions of this chapter including licensing and those requiring inspection of the slaughter of meat food animals and the preparation of carcasses or parts thereof, meat or meat food products shall not apply to operations of the types traditionally and usually conducted by a retail meat dealer at retail stores and restaurants, when conducted at any retail store or restaurant or similar type establishment for sale in normal retail quantities or service of such articles to ultimate consumers at such establishment. Normal retail quantities or service of such articles to consumers shall be as defined in regulations adopted under the provisions of this chapter. [1971 ex.s. c 108 § 3; 1969 ex.s. c 145 § 68.]

16.49A.610 Governmental units' authority to license, inspect and/or prohibit sale of meat or meat food products. This chapter shall in no manner be construed to deny or limit the authority of any governmental unit to license and carry on the necessary inspection of meat food animal carcasses or parts thereof, meat or meat food products distribution facilities and equipment of retail meat distributors, selling, offering for sale, holding for sale or trading, delivering or bartering meat within such governmental unit's jurisdiction and/or to prohibit the sale of meat food animal carcasses or parts thereof, meat or meat food products within its jurisdiction when such meat food animal carcasses or parts thereof, meat or meat food products are adulterated or distributed under unsanitary conditions. [1969 ex.s. c 145 § 69.]

16.49A.620 Prior liability preserved. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on August 11, 1969. [1969 ex.s. c 145 § 62.]

16.49A.630 Penalty. Any person violating any provisions of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and shall be guilty of a gross misdemeanor for any second or subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 145 § 63.]

16.49A.640 Rules and regulations subject to administrative procedure act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.04 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1969 ex.s. c 145 § 53.]

16.49A.650 Continuation of rules adopted pursuant to repealed chapter. The repeal of chapter 16.49 RCW (Meat Inspection Act) and the enactment of this chapter shall not be deemed to have repealed any rules adopted

under chapter 16.49 RCW not in conflict with the provisions of this chapter and relating to custom farm slaughterers, and custom slaughtering establishments. For the purpose of this chapter, it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to chapter 34.04 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after the effective date of this chapter shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning the adoption of rules. [1969 ex.s. c 145 § 56.]

16.49A.900 Portions of chapter conflicting with federal requirements—Construction. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the department, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the department, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the department. [1969 ex.s. c 145 § 70.]

16.49A.910 Severability—1969 ex.s. c 145. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 145 § 66.]

16.49A.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1969 ex.s. c 145 § 65.]

Chapter 16.50

HUMANE SLAUGHTER OF LIVESTOCK

Sections	
16.50.100	Declaration of policy.
16.50.110	Definitions.
16.50.120	Humane methods for bleeding or slaughtering livestock required.
16.50.130	Administration of chapter—Rules.
16.50.140	Manually operated hammer, sledge or poleaxe—Declared inhumane.
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16.50.160	Injunctions against violations.
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16.50.900	Severability—1967 c 31.

16.50.100 Declaration of policy. The legislature of the state of Washington finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economy in slaughtering operations; and produces other benefits for producers, processors and consumers which tend to expedite the orderly flow of livestock and their products. It is therefore declared to be the policy of the state of

Washington to require that the slaughter of all livestock, and the handling of livestock in connection with slaughter, shall be carried out only by humane methods and to provide that methods of slaughter shall conform generally to those authorized by the Federal Humane Slaughter Act of 1958, and regulations thereunder. [1967 c 31 § 1.]

16.50.110 Definitions. For the purpose of this chapter:

- (1) "Department" means the department of agriculture of the state of Washington.
- (2) "Director" means the director of the department or his duly appointed representative.
- (3) "Humane method" means either: (a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut; or (b) a method in accordance with the ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.
- (4) "Livestock" means cattle, calves, sheep, swine, horses, mules and goats.
- (5) "Packer" means any person engaged in the business of slaughtering livestock.
- (6) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association and every officer, agent or employee, thereof. This term shall import either the singular or plural, as the case may be.
- (7) "Slaughterer" means any person engaged in the commercial or custom slaughtering of livestock, including custom farm slaughterers. [1967 c 31 § 2.]

16.50.120 Humane methods for bleeding or slaughtering livestock required. No slaughterer or packer shall bleed or slaughter any livestock except by a humane method: *Provided*, That the director may, by administrative order, exempt a person from compliance with this chapter for a period of not to exceed six months if he finds that an earlier compliance would cause such person undue hardship. [1967 c 31 § 3.]

16.50.130 Administration of chapter—Rules. The director shall administer the provisions of this chapter. He shall adopt and may from time to time revise rules which shall conform substantially to the rules and regulations promulgated by the secretary of agriculture of the United States pursuant to the Federal Humane Slaughter Act of 1958, Public Law 85-765, 72 Stat. 862 and any amendments thereto. Such rules shall be adopted pursuant to the provisions of chapter 34.04 RCW as enacted or hereafter amended concerning the adoption of rules. [1967 c 31 § 4.]

16.50.140 Manually operated hammer, sledge or poleaxe—Declared inhumane. The use of a manually operated hammer, sledge or poleaxe is declared to be an

inhumane method of slaughter within the meaning of this chapter. [1967 c 31 § 5.]

16.50.150 Religious freedom—Ritual slaughter defined as humane. Nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provisions of this chapter, ritual slaughter and the handling or other preparation of livestock for ritual slaughter is defined as humane. [1967 c 31 § 10.]

16.50.160 Injunctions against violations. The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur, notwithstanding the existence of the other remedies at law. [1967 c 31 § 6.]

16.50.170 Penalty for violations. Any person violating any provision of this chapter or of any rule adopted hereunder is guilty of a misdemeanor and subject to a fine of not more than two hundred fifty dollars or confinement in the county jail for not more than ninety days. [1967 c 31 § 7.]

16.50.900 Severability—1967 c 31. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 31 § 9.]

Chapter 16.52

PREVENTION OF CRUELTY TO ANIMALS

Sections

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Cruelty to stock in transit: RCW 81.56.120.

Dogs—Taking, concealing, injuring, killing, etc.—Penalty: RCW 9.08.070.

16.52.010 Definitions—Construction. In RCW 16.52.010 through 16.52.055, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 the singular shall include the plural; the word "animal" shall be held to include every living creature, except man; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations in regard to animals transported, owned, or employed by, or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as of such agents or employees. [1901 c 146 § 17; RRS § 3200.]

16.52.020 Humane societies. Any citizens of the state of Washington who have heretofore, or who shall hereafter, incorporate as a body corporate, under the laws of this state as a humane society or as a society for the prevention of cruelty to animals may avail themselves of the privileges of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180: *Provided*, That the legislative authority in each county may grant exclusive authority to exercise the privileges and authority granted by this section to one or more qualified corporations for a period of up to three years based upon ability to fulfill the purposes of this chapter. [1973 1st ex.s. c 125 § 1; 1901 c 146 § 1; RRS § 3184.]

16.52.030 Members as peace officers—Powers and duties. All members and agents, and all officers of any society so incorporated, as shall by the trustees of such society be duly authorized in writing, approved by any judge of the superior court of the county, and sworn in the same manner as are constables and peace officers, shall have power lawfully to interfere to prevent the perpetration of any act of cruelty upon any animal and may use such force as may be necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any of the provisions of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 in the same manner as herein provided for other officers; and may carry the same weapons that such officers are authorized to carry. Authorizations under this section shall be for a period not exceeding three years or termination of duties, whichever occurs first. The trustees of the society shall review the authorizations every three years and may revoke authorizations at any time

by filing a certified revocation with the superior court from which the authorization was issued: *Provided*, That all such members and agents shall, when making arrests under this section, exhibit and expose a suitable badge to be adopted by such society. All persons resisting such specially authorized, approved and sworn officers, agents or members shall be guilty of a misdemeanor. [1982 c 114 § 2; 1901 c 146 § 2; RRS § 3185.]

16.52.040 Prosecutions. Any member of such society authorized as provided in RCW 16.52.030, may appear and prosecute in any court of competent jurisdiction for any violation of any of the provisions of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180, whether or not he be an attorney or counsellor at law: *Provided*, That all such prosecution shall be conducted in the name of the people of the state of Washington. [1901 c 146 § 14; RRS § 3197.]

16.52.050 Complaint—Search warrant—Arrest. When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases that the complainant believes that any of the provisions of law relating to or in any way affecting animals, are being or are about to be violated in any particular building or place, such magistrates shall issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or officer of any incorporated society qualified as provided in RCW 16.52.030, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating or attempting to violate any law relating to or in any way affecting animals, and to bring such person or persons before some court or magistrate of competent jurisdiction within the city or county within which such offense has been committed or attempted to be committed, to be dealt with according to law. [1901 c 146 § 10; RRS § 3193.]

16.52.055 Certain officers empowered to make arrests for violations. All sheriffs, constables, police and peace officers are empowered to make arrests for the violation of any provisions of RCW 16.52.010 through 16.52.055, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180, as in other cases of misdemeanor. [1901 c 146 § 3; RRS § 3186.]

16.52.060 Arrest without warrant. Any judge, sheriff, deputy, or police officer may arrest any person found committing any of the acts enumerated in RCW 16.52.065 or 81.56.120, without a warrant for such arrest, and any officer or member of any humane society, or society for the prevention of cruelty to animals, may cause the immediate arrest of any person engaged in, or who shall have committed such cruelties, upon making oral complaint to any sheriff, deputy, or police officer, or such officer or member of such society may himself or herself arrest any person found perpetrating any of the cruelties herein enumerated: *Provided*, That said person making such oral complaint or making such arrest shall file with

a proper officer a written complaint, stating the act or acts complained of, within twenty-four hours, excluding Sundays and legal holidays, after such arrest shall have been made. [1987 c 202 § 182; 1893 c 27 § 9; RRS § 3204.]

Intent—1987 c 202: See note following RCW 2.04.190.

16.52.065 Wanton cruelty to fowls. Whosoever shall wantonly or cruelly pluck, maim, torture, deprive of necessary food or drink, or wantonly kill any fowl or insectivorous bird, shall be deemed guilty of a misdemeanor. [1982 c 114 § 3; 1893 c 27 § 8; RRS § 3203. Formerly RCW 16.52.170.]

16.52.070 Certain acts as cruelty—Penalty. Except as provided in RCW 9A.48.080, every person who cruelly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills, or causes, procures, authorizes, requests or encourages so to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten or mutilated or cruelly killed, any animal; and whoever having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the same, or unnecessarily fails to provide the same with the proper food, drink, air, light, space, shelter or protection from the weather, or who wilfully and unreasonably drives the same when unfit for labor or with yoke or harness that chafes or galls it, or check rein or any part of its harness too tight for its comfort, or at night when it has been six consecutive hours without a full meal, or who cruelly abandons any animal, shall be guilty of a misdemeanor. For the purposes of this section, necessary sustenance or proper food means the provision at suitable intervals, not to exceed twenty-four hours, of wholesome foodstuff suitable for the species and age of the animal and sufficient to provide a reasonable level of nutrition for the animal. [1982 c 114 § 4; 1979 c 145 § 4; 1901 c 146 § 4; RRS § 3187. Prior: 1893 c 27 § 2, part; Code 1881 § 930, part; 1873 p 211 § 133; 1869 p 227 § 127; 1854 p 97 § 121.]

16.52.080 Transporting or confining in unsafe manner—Penalty. Any person who wilfully transports or confines or causes to be transported or confined any domestic animal or animals in a manner, posture or confinement that will jeopardize the safety of the animal or the public shall be guilty of a misdemeanor. And whenever any such person shall be taken into custody or be subject to arrest pursuant to a valid warrant therefor by any officer or authorized person, such officer or person may take charge of the animal or animals; and any necessary expense thereof shall be a lien thereon to be paid before the animal or animals may be recovered; and if the expense is not paid, it may be recovered from the owner of the animal or the person guilty. [1982 c 114 § 5; 1974 ex.s. c 12 § 1; 1901 c 146 § 5; RRS § 3188. Prior: 1893 c 27 § 2, part; Code 1881 § 930, part.]

Cruelty to stock in transit: RCW 81.56.120.

16.52.085 Removal of neglected animals for feeding and restoration to health—Examination—Notice—Return—Nonliability. (1) If the county sheriff or other law enforcement officer shall find that said domestic animal has been neglected by its owner, he or she may authorize the removal of the animal to a proper pasture or other suitable place for feeding and restoring to health.

(2) If a law enforcement officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of an allegedly neglected domestic animal by a veterinarian to determine whether the level of neglect 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 to a suitable place pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. In making the decision to remove an animal pursuant to this chapter, the law enforcement officer shall make a good faith effort to contact the animal's owner before removal unless the animal is in a life-threatening condition or unless the officer reasonably believes that the owner would remove the animal from the jurisdiction.

(4) If no criminal case is filed within seventy-two hours of the removal of the animal, the owner may petition the district court of the county where the removal of the animal occurred for the return of the animal. The petition shall be filed with the court, with copies served to the law enforcement agency responsible for removing the animal and to the prosecuting attorney. 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.

(5) In a motion or petition for the return of the removed animal 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 and is not in need of being restored to health.

(6) 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. [1987 c 335 § 1; 1974 ex.s. c 12 § 2.]

Construction—1987 c 335: "Nothing in this act shall be construed as expanding or diminishing, in any manner whatsoever, any authority granted officers under RCW 16.52.020 or 16.52.030." [1987 c 335 § 6.]

Severability—1987 c 335: "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." [1987 c 335 § 7.]

16.52.090 Docking horses—Misdemeanor. Every person who shall cut or cause to be cut, or assist in cutting the solid part of the tail of any horse in the operation known as "docking," or in any other operation for the purpose of shortening the tail or changing the carriage thereof, shall be guilty of a misdemeanor. [1901 c 146 § 6; RRS § 3189. FORMER PART OF SECTION: Code 1881 § 840; 1871 p 103 § 1; RRS § 3206, now codified as RCW 16.52.095.]

16.52.095 Cutting ears—Misdemeanor. It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal such as an ox, cow, bull, calf, sheep, goat or hog, and any person cutting off more than one-half of the ear or ears of any such animals, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum less than twenty dollars. [Code 1881 § 840; 1871 p 103 § 1; RRS § 3206. Formerly RCW 16.52.090, part.]

16.52.100 Confinement without food and water. Any person who shall impound or confine or cause to be impounded or confined any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof shall be guilty of a misdemeanor. In case any domestic animal shall be impounded or confined as aforesaid and shall continue to be without necessary food and water for more than twenty-four consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary to enter into and open any pound or place of confinement in which any domestic animal shall be confined, and supply it with necessary food and water so long as it shall be confined. Such person shall not be liable to action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall be subject to attachment therefor and shall not be exempt from levy and sale upon execution issued upon a judgment therefor. If an investigating officer finds it extremely difficult to supply such animals with food and water, the officer may remove the animals to protective custody for that purpose. [1982 c 114 § 6; 1901 c 146 § 12; RRS § 3195.]

16.52.110 Old or diseased animals at large. Every owner, driver, or possessor of any old, maimed or diseased horse, cow, mule, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: *Provided*, That this shall not apply to any such owner keeping any old or diseased animal belonging to him on his own premises with proper care. Every sick, disabled, infirm or crippled horse, ox, mule, cow or other domestic animal, which shall be abandoned on the public highway, or in any open or enclosed space in any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment. [1901 c 146 § 13; RRS § 3196.]

16.52.113 Causing animals to fight—Injuring animals—Presence at event. Any person who for amusement or gain causes any bull, bear, or other animal except a dog to fight with an animal of like kind, or causes any such animal, including dogs, to fight with a different kind of animal; or who for amusement or gain

injures any bull, bear, dog, or other animal, or causes any bull, bear, or other animal except a dog to worry or injure another such animal; and any person who permits any of these acts to be done on any premises under his charge or control or who aids, abets, or is present at such fighting, chasing, or worrying of such animal is guilty of a misdemeanor. [1982 c 114 § 8.]

16.52.117 Dog fighting—Owners, trainers, spectators—Exceptions. (1) Any person who does any of the following is guilty of a gross misdemeanor punishable by imprisonment not to exceed one year, or by a fine not to exceed five thousand dollars, or by both fine and imprisonment:

(a) Owns, possesses, keeps, or trains any dog with the intent that the dog shall be engaged in an exhibition of fighting with another dog;

(b) For amusement or gain causes any dog to fight with another dog, or causes any dogs to injure each other; or

(c) Permits any act in violation of (a) or (b) of this subsection to be done on any premises under his charge or control, or aids or abets any such act.

(2) Any person who is knowingly present, as a spectator, at any place or building where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at such preparations, or is knowingly present at such exhibition or at any other fighting or injuring as described in subsection (1)(b) of this section, with the intent to be present at such exhibition, fighting, or injuring, is guilty of a misdemeanor.

(3) Nothing in this section may prohibit the following:

(a) The use of dogs in the management of livestock, as defined by chapter 16.57 RCW, by the owner of the livestock or the owner's employees or agents or other persons in lawful custody of the livestock;

(b) The use of dogs in hunting as permitted by law; or

(c) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law. [1982 c 114 § 9.]

16.52.120 Cockfighting. Every person who wantonly or for the amusement of himself or others, or for gain, shall cause any cock to fight, chase, worry or injure any other animal, or to be fought, chased, worried or injured by any person or animal, and every person who shall permit the same to be done on any premises under his charge or control; and every person who shall aid, abet, or be present at such fighting, chasing, worrying or injuring of such animal as a spectator, shall be guilty of a misdemeanor. [1982 c 114 § 11; 1901 c 146 § 7; RRS § 3190.]

16.52.130 Training birds to fight—Attending exhibitions. Every person who owns, possesses, keeps, or trains any bird with the intent that such bird shall be engaged in an exhibition of fighting, or is present at any place, building or tenement, where training is being had or preparations are being made for the fighting of birds, with the intent to be present at such exhibition, or is

present at such exhibition, shall be guilty of a misdemeanor. [1982 c 114 § 12; 1901 c 146 § 8; RRS § 3191.]

16.52.140 Arrest without warrant. Any person qualified under RCW 16.52.030 and any sheriff, constable, police or peace officer may enter any place, building or tenement, where there is an exhibition of the fighting of birds or animals or where preparations are being made or training had for such exhibition, and without a warrant arrest all or any persons there present and bring them before some court or magistrate of competent jurisdiction to be dealt with according to law. [1901 c 146 § 11; RRS § 3194.]

16.52.160 Punishment—Attempt as a misdemeanor. Every person who shall attempt to do any act or thing which by RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 is made a misdemeanor shall be guilty of a misdemeanor. [1901 c 146 § 9; RRS § 3192. FORMER PART OF SECTION: 1901 c 146 § 16; RRS § 3199, now codified as RCW 16.52.165.]

16.52.165 Punishment—Conviction of misdemeanor. Every person convicted of any misdemeanor under RCW 16.52.080 or 16.52.090 shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution. [1982 c 114 § 7; 1901 c 146 § 16; RRS § 3199. Formerly RCW 16.52.160, part.]

16.52.180 Limitations on application of chapter. No part of RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 shall be deemed to interfere with any of the laws of this state known as the "game laws," nor shall RCW 16.52.010 through 16.52.050, 16.52.070 through 16.52.090 and 16.52.100 through 16.52.180 be deemed to interfere with the right to destroy any venomous reptile or any known as dangerous to life, limb or property, or to interfere with the right to kill animals to be used for food or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated college or university of the state of Washington. [1901 c 146 § 18; RRS § 3201.]

16.52.185 Exclusions from chapter. Nothing in this chapter applies to accepted husbandry practices used in the commercial raising or slaughtering of livestock or poultry, or products thereof or to the use of animals in the normal and usual course of rodeo events. [1982 c 114 § 10.]

16.52.190 Poisoning animals. It shall be unlawful for any person to wilfully or maliciously poison any domestic animal or domestic bird: *Provided*, That the provisions of this section shall not apply to the killing by poison such animal or bird in a lawful and humane manner by the owner thereof, or by a duly authorized

servant or agent of such owner, or by a person acting pursuant to instructions from a duly constituted public authority. [1941 c 105 § 1; RRS § 3207-1. Formerly RCW 16.52.150, part.]

16.52.193 Poisoning animals—Strychnine sales—Records—Report on suspected purchases. It shall be unlawful for any person other than a registered pharmacist to sell at retail or furnish to any person any strychnine: *Provided*, That nothing herein shall prohibit county, state or federal agents, in the course of their duties, from furnishing strychnine to any person. Every such registered pharmacist selling or furnishing such strychnine shall, before delivering the same, record the transaction as provided in RCW 69.38.030. If any such registered pharmacist shall suspect that any person desiring to purchase strychnine intends to use the same for the purpose of poisoning unlawfully any domestic animal or domestic bird, he may refuse to sell to such person, but whether or not he makes such sale, he shall if he so suspects an intention to use the strychnine unlawfully, immediately notify the nearest peace officer, giving such officer a complete description of the person purchasing, or attempting to purchase, such strychnine. [1987 c 34 § 7; 1941 c 105 § 2; Rem. Supp. 1941 § 3207-2. Formerly RCW 18.67.110.]

16.52.195 Poisoning animals—Penalty. Any person violating any of the provisions of RCW 16.52.190 or 16.52.193 shall be guilty of a gross misdemeanor. [1941 c 105 § 3; RRS § 3207-3. Formerly RCW 16.52.150, part.]

16.52.200 Sentences—Forfeiture of animals—Liability for costs—Civil penalty. (1) The sentence imposed for a 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 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 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 cruel treatment to have been severe and likely to reoccur. If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years. The court may delay its decision on forfeiture under this subsection until the end of the probationary period.

(4) In addition to fines and court costs, the owner, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by the law enforcement or authorized private or public entities involved with the care of the animals.

(5) If convicted, the owner shall also pay a civil penalty of one hundred 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. [1987 c 335 § 2.]

Construction—Severability—1987 c 335: See notes following RCW 16.52.085.

16.52.210 Destruction of animal by law enforcement officer—Immunity from liability. This chapter shall not limit the right of a law enforcement officer to destroy an animal that has been seriously injured and would otherwise continue to suffer. Such action shall be undertaken with reasonable prudence and, whenever possible, in consultation with a licensed veterinarian and the owner of the animal.

Law enforcement officers and licensed veterinarians shall be immune from civil and criminal liability for actions taken under this chapter if reasonable prudence is exercised in carrying out the provisions of this chapter. [1987 c 335 § 3.]

Construction—Severability—1987 c 335: See notes following RCW 16.52.085.

Chapter 16.54

ABANDONED ANIMALS

Sections

16.54.010	When deemed abandoned.
16.54.020	Disposition of abandoned animal by person having custody.
16.54.030	Duty of sheriff—Sale—Disposition of proceeds.

16.54.010 When deemed abandoned. An animal is deemed to be abandoned under the provisions of this chapter when it is placed in the custody of a veterinarian, boarding kennel owner, or any person for treatment, board, or care and:

(1) Having been placed in such custody for an unspecified period of time the animal is not removed within fifteen days after notice to remove the animal has been given to the person who placed the animal in such custody or having been so notified the person depositing the animal refuses or fails to pay agreed upon or reasonable charges for the treatment, board, or care of such animal, or;

(2) Having been placed in such custody for a specified period of time the animal is not removed at the end of such specified period or the person depositing the animal refuses to pay agreed upon or reasonable charges for the treatment, board, or care of such animal. [1977 ex.s. c 67 § 1; 1955 c 190 § 1.]

16.54.020 Disposition of abandoned animal by person having custody. Any person having in his care, custody, or control any abandoned animal as defined in RCW 16.54.010, may deliver such animal to any humane society having facilities for the care of such animals or to any pound maintained by or under contract or agreement with any city or county within which such animal

was abandoned. If no such humane society or pound exists within the county the person with whom the animal was abandoned may notify the sheriff of the county wherein the abandonment occurred. [1955 c 190 § 2.]

16.54.030 Duty of sheriff—Sale—Disposition of proceeds. It shall be the duty of the sheriff of such county upon being so notified, to dispose of such animal as provided by law in reference to estrays if such law is applicable to the animal abandoned, or if not so applicable then such animal shall be sold by the sheriff at public auction. Notice of any such sale shall be given by posting a notice in three public places in the county at least ten days prior to such public sale. Proceeds of such sale shall be paid to the county treasurer for deposit in the county general fund. [1955 c 190 § 3.]

Chapter 16.57

IDENTIFICATION OF LIVESTOCK

Sections

- 16.57.010 Definitions.
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16.57.010 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, poultry and rabbits.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the director to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "Brand inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides and/or the application of any artificial identification such as back tags or ear clips necessary to preserve the identity of the livestock or livestock hides examined.

(8) "Class I estray" means any cattle or horses at large contrary to the provisions of RCW 16.13.010 as now or hereafter amended, or any unclaimed cattle or horses submitted or impounded by any person at any public livestock market or any other facility approved by the director.

(9) "Class II estray" means any cattle or horses identified as estray that are offered for sale and as provided for in RCW 16.57.290 as now or hereafter amended.

(10) "Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the director.

(11) "Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse. [1981 c 296 § 15; 1979 c 154 § 17; 1967 c 240 § 34; 1959 c 54 § 1.]

Severability—1981 c 296: See note following RCW 15.04.020.

Severability—1979 c 154: See note following RCW 15.49.330.

Class I and class II estray livestock established: RCW 16.13.025.

16.57.020 Recording brands—Fee. The director shall be the recorder of livestock brands and such brands

shall not be recorded elsewhere in this state. Any person desiring to register a livestock brand shall apply on a form prescribed by the director. Such application shall be accompanied by a facsimile of the brand applied for and a twenty-five dollar recording fee. The director shall, upon his satisfaction that the application meets the requirements of this chapter and/or rules and regulations adopted hereunder, record such brand. [1971 ex.s. c 135 § 1; 1965 c 66 § 1; 1959 c 54 § 2.]

16.57.030 Tattoo brands and marks not recordable—Validation of prior recordings. The director shall not record tattoo brands or marks for any purpose subsequent to the enactment of this chapter. However, all tattoo brands and marks of record on the date of the enactment of this chapter shall be recognized as legal ownership brands or marks. [1959 c 54 § 3.]

16.57.040 Production record brands. The director may provide for the use of production record brands. Numbers for such brands shall be issued at the discretion of the director and shall be placed on livestock immediately below the registered ownership brand or any other location prescribed by the director. [1974 ex.s. c 64 § 1; 1959 c 54 § 4.]

16.57.050 Use of unrecorded brand prohibited. No person shall place a brand on livestock for any purpose unless such brand is recorded in his name. [1959 c 54 § 5.]

16.57.060 Brands similar to governmental brands not to be recorded. No brand shall be recorded for ownership purposes which will be applied in the same location and is similar or identical to a brand used or reserved for ownership or health purposes by a governmental agency or the agent of such an agency. [1959 c 54 § 6.]

16.57.070 Conflicting claims to brand. The director shall determine conflicting claims between applicants to a brand, and in so doing shall consider the priority of applicants. [1959 c 54 § 7.]

16.57.080 Renewal—Fee—Effect of failure. The director shall, on or before the first day of September 1975, and every two years thereafter, notify by letter the owners of brands then of record, that on the payment of twenty-five dollars and application of renewal, the director shall issue written proof of payment allowing the brand owner exclusive ownership and use of such brand for another two year period. The failure of the registered owner to pay the renewal fee by December 31st of the renewal year shall cause such owner's brand to revert to the department. The director may for a period of one year following such reversion, reissue such brand only to the prior registered owner upon payment of twenty-five dollars and an additional fee of ten dollars for renewal subsequent to the regular renewal period. The director may at his discretion, if such brand is not reissued within one year to the prior registered owner, issue such brand to any other applicant. [1974

ex.s. c 64 § 2; 1971 ex.s. c 135 § 2; 1965 c 66 § 3; 1961 c 148 § 1; 1959 c 54 § 8.]

16.57.090 Brand is personal property—Instruments affecting title, recording, effect—Nonliability of director for agents. A brand is the personal property of the owner of record. Any instrument affecting the title of such brand shall be acknowledged in the presence of the recorded owner and a notary public. The director shall record such instrument upon presentation and payment of a ten dollar recording fee. Such recording shall be constructive notice to all the world of the existence and conditions affecting the title to such brand. A copy of all records concerning the brand, certified by the director, shall be received in evidence to all intent and purposes as the original instrument. The director shall not be personally liable for failure of his agents to properly record such instrument. [1974 ex.s. c 64 § 3; 1965 c 66 § 2; 1959 c 54 § 9.]

16.57.100 Right to use brand—Brand as evidence of title. The right to use a brand shall be evidenced by the original certificate issued by the director showing that the brand is of present record or a certified copy of the record of such brand showing that it is of present record. A healed brand of record on livestock shall be prima facie evidence that the recorded owner of such brand has legal title to such livestock and is entitled to its possession: *Provided*, That the director may require additional proof of ownership of any animal showing more than one healed brand. [1971 ex.s. c 135 § 3; 1959 c 54 § 10.]

16.57.105 Preemptory right to use brand. Any person having a brand recorded with the department shall have a preemptory right to use such brand and its design under any newly approved method of branding adopted by the director. [1967 c 240 § 38.]

16.57.110 Size and characteristics of brand. No brand shall be placed on livestock that is not permanent in nature and of a size that is not readily visible. The director, in order to assure that brands are readily visible, may prescribe the size of branding irons to be used for ownership brands. [1959 c 54 § 11.]

16.57.120 Removal or alteration of brand—Penalty. No person shall remove or alter a brand of record on livestock without first having secured the written permission of the director. Violation of this section shall be a gross misdemeanor. [1959 c 54 § 12.]

16.57.130 Similar brands not to be recorded. The director shall not record a brand that is identical to a brand of present record; nor a brand so similar to a brand of present record that it will be difficult to distinguish between such brands when applied to livestock. [1959 c 54 § 13.]

16.57.140 Certified copy of record of brand—Fee. The owner of a brand of record may procure from the director a certified copy of the record of his brand upon

payment of five dollars. [1974 ex.s. c 64 § 4; 1959 c 54 § 14.]

16.57.150 Brand book. The director shall publish a book to be known as the "Washington State Brand Book", showing all the brands of record. Such book shall contain the name and address of the owners of brands of record and a copy of the brand laws and regulations. Supplements to such brand book showing newly recorded brands, amendments or newly adopted regulations, shall be published biennially, or prior thereto at the discretion of the director: *Provided*, That whenever he deems it necessary, the director may issue a new brand book. [1974 ex.s. c 64 § 5; 1959 c 54 § 15.]

16.57.160 Brand inspection—Mandatory, when. Brand inspection of cattle shall be mandatory at the following points:

(1) Prior to being moved out of state to any point where brand inspection is not maintained by the director, directly or in agreement with another state.

(2) Subsequent to delivery to a public livestock market and prior to sale at such public livestock market unless such cattle are exempt from brand inspection by law or regulation adopted by the director in order to avoid duplication and/or to allow for efficient administration of this chapter.

(3) Prior to slaughter at any point of slaughter unless such cattle are exempt from such brand inspection by law or regulations adopted by the director because of prior brand inspection or if such cattle are immediate slaughter cattle shipped directly to a point of slaughter from another state and accompanied by a brand inspection certificate specifically identifying such cattle issued by the state of origin or a lawful agency thereof.

(4) Prior to the branding of any cattle except as otherwise provided by law or regulation.

(5) Prior to the sale of any cattle except as otherwise provided by law or regulation.

The director may by regulation adopted subsequent to a public hearing designate any other point for mandatory brand inspection of cattle or the furnishing of proof that cattle passing or being transported through such points have been brand inspected and are lawfully being moved. Further, the director may stop vehicles carrying cattle to determine if such cattle are identified or branded as immediate slaughter cattle, and if so that such cattle are not being diverted for other purposes to points other than the specified point of slaughter. [1981 c 296 § 16; 1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

Reviser's note: 1981 c 296 was approved by the governor on May 19, 1981.

Effective date—1981 c 296 § 16: "Section 16 of this amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1981 c 296 § 34.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.165 Agreements with others to perform brand inspection. The director may, in order to reduce the cost

of brand inspection to livestock owners, enter into agreements with any qualified county, municipal, or other local law enforcement agency, or qualified individuals for the purpose of performing brand inspection in areas where department brand inspection may not readily be available. [1971 ex.s. c 135 § 6.]

16.57.170 Examination of livestock, hides, records. The director may enter at any reasonable time any slaughterhouse or public livestock market to make an examination of the brands on livestock or hides, and may enter at any reasonable time an establishment where hides are held to examine them for brands. The director may enter any of these premises at any reasonable time to examine all books and records required by law in matters relating to brand inspection or other methods of livestock identification. [1959 c 54 § 17.]

16.57.180 Search warrants. Should the director be denied access to any premises or establishment where such access was sought for the purposes set forth in RCW 16.57.170, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for said purposes. The court may upon such application, issue the search warrant for the purposes requested. [1959 c 54 § 18.]

16.57.200 Duty of owner or agent on brand inspection. Any owner or his agent shall make the brand or brands on livestock being brand inspected readily visible and shall cooperate with the director to carry out such brand inspection in a safe and expeditious manner. [1959 c 54 § 20.]

16.57.210 Arrest without warrant. The director shall have authority to arrest any person without warrant anywhere in the state found in the act of, or whom he has reason to believe is guilty of, driving, holding, selling or slaughtering stolen livestock. Any such person arrested by the director shall be turned over to the sheriff of the county where the arrest was made, as quickly as possible. [1959 c 54 § 21.]

16.57.220 Charges for brand inspection of cattle—Payable, when—Lien—Schedule of fees to be adopted. The director shall cause a charge to be made for all brand inspection of cattle required under this chapter and rules and regulations adopted hereunder. Such charges shall be paid to the department by the owner or person in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and if not shall constitute a prior lien on the cattle or cattle hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspection shall establish schedules by days and hours when a brand inspector will be on duty to perform brand inspection at established inspection points. The fees for brand inspection performed at inspection points

according to schedules established by the director shall be not less than thirty cents nor more than fifty cents as prescribed by the director subsequent to a hearing. Fees for brand inspection performed by the director at points other than those designated by the director or not in accord with the schedules established by him shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.04 RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended. [1981 c 296 § 17; 1971 ex.s. c 135 § 5; 1967 c 240 § 35; 1959 c 54 § 22.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.230 Charges for brand inspection—Actual inspection required. No person shall collect or make a charge for brand inspection of livestock unless there has been an actual brand inspection of such livestock by the director. [1959 c 54 § 23.]

16.57.240 Record of cattle. Any person purchasing, selling, holding for sale, trading, bartering, transferring title, slaughtering, handling, or transporting cattle shall keep a record on forms prescribed by the director. Such forms shall show the number, specie, brand or other method of identification of such cattle and any other necessary information required by the director. Such records shall be made in triplicate; the original shall be kept for a period of three years and shall be furnished to the director upon demand, one copy shall accompany the cattle to their destination and one copy shall be kept by the person handling the transaction for a period of at least twelve months following the transaction and shall be subject to inspection at any time by the director or any peace officer or member of the state patrol: *Provided*, That in the following instances only, cattle may be moved or transported within this state without being accompanied by a certificate of permit or an official brand inspection certificate or bill of sale:

(1) When such cattle are moved or transported upon lands under the exclusive control of the person moving or transporting such cattle;

(2) When such cattle are being moved or transported for temporary grazing or feeding purposes and have the registered brand of the person having or transporting such cattle. [1985 c 415 § 8; 1981 c 296 § 18; 1959 c 54 § 24.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.260 Removal of cattle or horses from state—Inspection certificate required. It shall be unlawful for any person to remove or cause to be removed or accept for removal from this state, any cattle or horses which are not accompanied at all times by an official brand inspection certificate issued by the director on such cattle or horses, except as provided in RCW 16.57.160. [1981 c 296 § 19; 1959 c 54 § 26.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.270 Unlawful to refuse assistance in establishing identity of livestock. It shall be unlawful for any person moving or transporting livestock in this state to refuse to assist the director or any peace officer in establishing the identity of such livestock being moved or transported. [1959 c 54 § 27.]

16.57.275 Transporting cattle carcass or primal part—Certificate of permit required. Any cattle carcass, or primal part thereof, of any breed or age being transported in this state from other than a state or federal licensed and inspected slaughterhouse or common carrier hauling for such slaughterhouse, shall be accompanied by a certificate of permit signed by the owner of such carcass or primal part thereof and, if such carcass or primal part is delivered to a facility custom handling such carcasses or primal part thereof, such certificate of permit shall be deposited with the owner or manager of such custom handling facility and such certificate of permit shall be retained for a period of one year and be made available to the department for inspection during reasonable business hours. The owner of such carcass or primal part thereof shall mail a copy of the said certificate of permit to the department within ten days of said transportation. [1967 c 240 § 37.]

16.57.280 Possession of livestock marked with another's brand. No person shall have in his possession any livestock marked with a recorded brand or tattoo of another person unless:

(1) Such livestock bears his own healed recorded brand, or

(2) Such livestock is accompanied by a certificate of permit from the owner of the recorded brand or tattoo, or

(3) Such livestock is accompanied by a brand inspection certificate, or

(4) Such livestock is accompanied by a bill of sale from the previous owner or other satisfactory proof of ownership. [1959 c 54 § 28.]

16.57.290 Estrays declared. All unbranded cattle and horses and those bearing brands not recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit, and those bearing brands recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit signed by the owner of the brand when presented for inspection, are hereby declared to be class II estrays, unless other satisfactory proof of ownership is presented showing the person presenting them to be lawfully in possession. Such estrays shall be sold by the director or his representative who shall give the purchasers a bill of sale therefor, or, if theft is suspected, the horse may be impounded by the director or the director's representative. [1981 c 296 § 20; 1979 c 154 § 18; 1967 ex.s. c 120 § 6; 1959 c 54 § 29.]

Severability—1981 c 296: See note following RCW 15.04.020.

Severability—1979 c 154: See note following RCW 15.49.330.

16.57.295 Disposition of class I estrays. Class I estrays shall be disposed of in accordance with the provisions of chapter 16.13 RCW. [1979 c 154 § 25.]

Severability—1979 c 154: See note following RCW 15.49.330.

16.57.300 Disposition of proceeds of sale of class II estrays. The proceeds from the sale of class II estrays, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of class II estrays at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell such cattle or horses. If such consignor fails to establish legal ownership or the right to sell such cattle or horses, such proceeds shall be paid to the director to be disposed of as any other estray proceeds. [1981 c 296 § 21; 1959 c 54 § 30.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.310 Notice of sale—Claim on proceeds. When a person has been notified by registered mail that animals bearing his recorded brand have been sold by the director, he shall present to the director a claim on the proceeds within ten days from the receipt of the notice or the director may decide that no claim exists. [1959 c 54 § 31.]

16.57.320 Disposition of proceeds of sale when no proof of ownership—Penalty for accepting proceeds after sale, trade, etc. If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the director with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he has sold, bartered or traded such animals to the claimant or any other person. [1959 c 54 § 32.]

16.57.330 Disposition of proceeds of sale when no claim made. If, after the expiration of one year from the date of sale, no claim is made, the money shall be credited to the department of agriculture to be expended in carrying out the provisions of this chapter. [1959 c 54 § 33.]

16.57.340 Reciprocal agreements—When livestock from another state an estray, sale. The director shall have the authority to enter into reciprocal agreements with any or all states to prevent the theft, misappropriation or loss of identification of livestock. The director may declare any livestock which is shipped or moved into this state from such states estrays if such livestock is not accompanied by the proper official brand certificate or other such certificates required by the law of the state of origin of such livestock. The director may hold such livestock subject to all costs of holding or sell such livestock and send the funds, after the deduction of the cost

of such sale, to the proper authority in the state of origin of such livestock. [1959 c 54 § 34.]

16.57.350 Rules—Enforcement of chapter. The director, but not his duly appointed representatives, may adopt such rules and/or regulations as are necessary to carry out the purposes of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and/or rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out duties imposed on him by this chapter and/or rules and regulations adopted hereunder. [1959 c 54 § 35.]

16.57.360 Penalty. The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a misdemeanor unless otherwise specified herein. [1959 c 54 § 36.]

16.57.370 Disposition of fees. All fees collected under the provisions of this chapter shall be retained and deposited by the director to be used only for the enforcement of this chapter. [1959 c 54 § 37.]

Fees provided in chapter 16.58 RCW to be used to carry out provisions of chapters 16.57 and 16.58 RCW: RCW 16.58.130.

16.57.380 Horses—Mandatory brand inspection points—Powers of director. Brand inspection of horses shall be mandatory at the following points:

(1) Prior to being moved out of state to any point where brand inspection is not maintained by the director, directly or in agreement with another state.

(2) Subsequent to delivery to a public livestock market and prior to sale at such public livestock market unless such horses are exempt from brand inspection by law, or regulations adopted by the director in order to avoid duplication and/or to allow for efficient administration of this chapter.

(3) Prior to slaughter at any point of slaughter unless such horses are exempt from such brand inspection by law, or regulations adopted by the director in order to avoid duplication and/or to allow for efficient administration of this chapter.

(4) Prior to the branding of any horses except as otherwise provided by law or regulation.

(5) Prior to the sale of any horses except as otherwise provided by law or regulation.

The director may by regulation adopted subsequent to a public hearing designate any other point for mandatory brand inspection of horses or the furnishing of proof that horses passing or being transported through such points have been brand inspected and are lawfully being moved. Further, the director may stop vehicles carrying horses to determine if such horses are identified or branded as immediate slaughter horses, and if so that such horses are not being diverted for other purposes to points other than the specified point of slaughter. [1981 c 296 § 22; 1974 ex.s. c 38 § 1.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.390 Horses—Brand inspection fees and charges. The director shall cause a charge to be made for all brand inspections of horses required under this chapter and rules and regulations adopted hereunder. Such charges shall be paid to the department by the owner or person in possession unless requested by the purchaser and then such brand inspection shall be paid by the purchaser requesting such brand inspection. Such inspection charges shall be due and payable at the time brand inspection is performed and if not shall constitute a prior lien on the horses or horse hides brand inspected until such charge is paid. The director in order to best utilize the services of the department in performing brand inspections of horses shall establish schedules by days and hours when a brand inspector will be on duty or perform brand inspections of horses at established inspection points. The fees for brand inspections of horses performed at inspection points according to schedules established by the director shall be not more than two dollars as prescribed by the director subsequent to a hearing. Fees for brand inspections of horses performed by the director at points other than those designated by the director or not in accord with the schedules established by him shall be based on a fee schedule not to exceed actual net cost to the department of performing the brand inspection service. Such schedule of fees shall be established subsequent to a hearing and all regulations concerning fees shall be adopted in accord with the provisions of chapter 34.04 RCW, the Administrative Procedure Act, concerning the adoption of rules as enacted or hereafter amended. [1974 ex.s. c 38 § 2.]

16.57.400 Horses—Identification certificates—Exemption from brand inspection—Fees. The director may provide by rules and regulations adopted pursuant to chapter 34.04 RCW for the issuance of individual horse identification certificates or other means of horse identification deemed appropriate. Such certificates or other means of identification shall be valid only for the use of the horse owner in whose name it is issued.

Horses identified pursuant to the provisions of this section and the rules and regulations adopted hereunder shall not be subject to brand inspection except when sold at points provided for in RCW 16.57.380. The director shall charge a fee for the certificates or other means of identification authorized pursuant to this section and no identification shall be issued until the director has received the fee. The schedule of fees shall be established in accordance with the provisions of chapter 34.04 RCW. [1981 c 296 § 23; 1974 ex.s. c 38 § 3.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.410 Horses—Individual identification symbols—Permit required to act as registering agency—Application—Form—Fee—Rules. (1) No person may act as a registering agency without a permit issued by the department. The director may issue a permit to any person or organization to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the director. Application for such permit, or the renewal

thereof by January 1 of each year, shall be on a form prescribed by the director, and accompanied by the proof of registration to be issued, any other documents required by the director, and a fee of one hundred dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the director, if requested by the director.

(3) Individual identification symbols shall be inspected as required for brands under RCW 16.57.380 and 16.57.390. Any horse presented for inspection and bearing such a symbol, but not accompanied by proof of registration and certificate of permit, shall be considered a class II estray under RCW 16.57.290 through 16.57.330.

(4) The director shall adopt such rules as are necessary for the effective administration of this section pursuant to chapter 34.04 RCW. [1981 c 296 § 35.]

Severability—1981 c 296: See note following RCW 15.04.020.

16.57.900 Severability—1959 c 54. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 54 § 38.]

16.57.901 Severability—1967 c 240. See note following RCW 43.23.010.

Chapter 16.58

IDENTIFICATION OF CATTLE THROUGH LICENSING OF CERTIFIED FEED LOTS

Sections	
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16.58.170	General penalties—Subsequent offenses.
16.58.900	Chapter as cumulative and nonexclusive.
16.58.910	Severability—1971 ex.s. c 181.

16.58.010 Purpose. The purpose of this chapter is to expedite the movement of cattle from producers to the point of slaughter without losing the ownership identity of such cattle, and further to provide for fair and economical methods of identification of cattle in such commercial feed lots. [1979 c 81 § 1; 1971 ex.s. c 181 § 1.]

16.58.020 Definitions. For the purpose of this chapter:

(1) "Certified feed lot" means any place, establishment, or facility commonly known as a commercial feed lot, cattle feed lot, or the like, which complies with all of the requirements of this chapter, and any regulations adopted pursuant to the provisions of this chapter and which holds a valid license from the director as hereinafter provided.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his duly authorized representative.

(4) "Licensee" means any persons licensed under the provisions of this chapter.

(5) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be. [1971 ex.s. c 181 § 2.]

16.58.030 Rules and regulations—Interference with director proscribed. The director may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. The adoption of such rules shall be subject to the provisions of this chapter and rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out any duties imposed upon him by this chapter or rules and regulations adopted hereunder. [1971 ex.s. c 181 § 3.]

16.58.040 Certified feed lot license—Required—Application, contents. On or after August 9, 1971, any person desiring to engage in the business of operating one or more certified feed lots shall obtain an annual license from the director for such purpose. The application for a license shall be on a form prescribed by the director and shall include the following:

(1) The number of certified feed lots the applicant intends to operate and their exact location and mailing address;

(2) The legal description of the land on which the certified feed lot will be situated;

(3) A complete description of the facilities used for feeding and handling of cattle at each certified feed lot;

(4) The estimated number of cattle which can be handled for feeding purposes at each such certified feed lot; and

(5) Any other information necessary to carry out the purpose and provisions of this chapter and rules or regulations adopted hereunder. [1971 ex.s. c 181 § 4.]

16.58.050 Certified feed lot license—Fee—Issuance or renewal. The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of five hundred dollars. Upon approval of the application by the director and compliance with the provisions of this chapter and rules and regulations adopted hereunder, the applicant shall be issued a license or a renewal thereof. [1979 c 81 § 2; 1971 ex.s. c 181 § 5.]

16.58.060 Certified feed lot license—Expiration—Additional fee for late renewal, when. All certified feed lot licenses shall expire on June 30th, subsequent to the date of issue. Any person who fails, refuses, or neglects to apply for renewal of a preexisting license on or before the date of expiration shall be assessed an additional twenty-five dollars which shall be added to the regular license fee and shall be paid before the director may issue a license to the applicant: *Provided*, That such additional fee shall not be assessed if the applicant furnishes an affidavit certifying that he has not engaged in the business of operating a certified feed lot subsequent to the expiration of his license. [1971 ex.s. c 181 § 6.]

16.58.070 Certified feed lot license—Denial, suspension or revocation of—Procedure. The director is authorized to deny, suspend, or revoke a license in accord with the provisions of chapter 34.04 RCW if he finds that there has been a failure to comply with any requirement of this chapter or rules and regulations adopted hereunder. Hearings for the revocation, suspension, or denial of a license shall be subject to the provisions of chapter 34.04 RCW concerning contested cases. [1971 ex.s. c 181 § 7.]

16.58.080 Brand inspection, facilities and help to be furnished for. Every certified feed lot shall be equipped with a facility or a livestock pen, approved by the director as to location and construction within the said feed lot so that necessary brand inspection can be carried on in a proper, expeditious and safe manner. Each licensee shall furnish the director with sufficient help necessary to carry out brand inspection in the manner set forth above. [1971 ex.s. c 181 § 8.]

16.58.090 Certain cattle exempt from brand inspection. Any cattle or lot of cattle owned or fed by a certified feed lot and delivered to or received from such certified feed lot and accompanied by a brand inspection certificate issued by the director, another state or any agency authorized by law to issue such brand inspection certificates, shall not be subject to brand inspection if the director is given written assurance, upon a form provided by the director, by said certified feed lot that such cattle or lot of cattle have not been commingled with uninspected cattle. [1971 ex.s. c 181 § 9.]

16.58.095 Brand inspection required for cattle not having brand inspection certificate. All cattle entering or re-entering a certified feed lot must be inspected for

brands upon entry, unless they are accompanied by a brand inspection certificate issued by the director, or any other agency authorized in any state or Canadian province by law to issue such a certificate. [1979 c 81 § 6.]

16.58.100 Audits—Purpose. The director shall each year conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. Such audits shall be for the purpose of determining if such cattle correlate with the brand inspection certificates issued in their behalf and that the certificate of assurance furnished the director by the licensee correlates with his assurance that brand inspected cattle were not commingled with uninspected cattle. [1979 c 81 § 3; 1971 ex.s. c 181 § 10.]

16.58.110 Records—Audit of. All certified feed lots shall furnish the director with records as requested by him from time to time on all cattle entering or on feed in said certified feed lots and dispersed therefrom. All such records shall be subject to audit by the director for the purpose of maintaining the integrity of the identity of all such cattle. The director shall cause such audits to be made only during regular business hours except in an emergency to protect the interest of the owners of such cattle. [1971 ex.s. c 181 § 11.]

16.58.120 Records when more than one certified feed lot. The licensee shall maintain sufficient records as required by the director so that a true audit can be properly performed at each certified feed lot, if said licensee operates more than one certified feed lot. [1971 ex.s. c 181 § 12.]

16.58.130 Fee for each head of cattle handled—Arrears. Each licensee shall pay to the director a fee of ten cents for each head of cattle handled through his feed lot. Payment of such fee shall be made by the licensee following the completion of an official audit and within fifteen days of billing by the director. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. Further, the director shall not renew a certified feed lot license if an applicant is in arrears as to his audit payments. [1979 c 81 § 4; 1971 ex.s. c 181 § 13.]

16.58.140 Disposition of fees. All fees provided for in this chapter shall be retained by the director for the purpose of enforcing and carrying out the purpose and provisions of this chapter or chapter 16.57 RCW. [1979 c 81 § 5; 1971 ex.s. c 181 § 14.]

16.58.150 Situations when no brand inspection required. No brand inspection shall be required when cattle are moved or transferred from one certified feed lot to another or the transfer of cattle from a certified feed lot to a point within this state, or out of state where this state maintains brand inspection, for the purpose of immediate slaughter. [1971 ex.s. c 181 § 15.]

16.58.160 Suspension of license awaiting audit. The director shall, when a certified feed lot's conditions become such that the integrity of an audit conducted of the cattle therein becomes doubtful, suspend such certified feed lot's license until such time as the director can conduct a valid audit as required to carry out the purpose of this chapter. [1971 ex.s. c 181 § 16.]

16.58.170 General penalties—Subsequent offenses. Any person who violates the provisions of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and shall be guilty of a gross misdemeanor for any second or subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1971 ex.s. c 181 § 17.]

16.58.900 Chapter as cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1971 ex.s. c 181 § 18.]

16.58.910 Severability—1971 ex.s. c 181. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances shall not be affected. [1971 ex.s. c 181 § 19.]

Chapter 16.60 FENCES

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16.60.085	Temporary gate across highway—Auditor may grant permit.
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16.60.010 Lawful fence defined. A lawful fence shall be of at least four barbed, horizontal, well-stretched wires, spaced so that the top wire is forty-eight inches, plus or minus four inches, above the ground and the other wires at intervals below the top wire of twelve, twenty-two, and thirty-two inches. These wires shall be securely fastened to substantial posts set firmly in the ground as nearly equidistant as possible, but not more than twenty-four feet apart. If the posts are set more than sixteen feet apart, the wires shall be supported by stays placed no more than eight feet from each other or

from the posts. [1985 c 415 § 22; Code 1881 § 2488; 1873 p 447 § 1; 1871 p 63 § 1; 1869 p 323 § 1; RRS § 5441. FORMER PART OF SECTION: Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442, now codified as RCW 16.60.011.]

16.60.011 Other lawful fences. All other fences as strong and as well calculated as the fence described in RCW 16.60.010 shall be lawful fences. [1985 c 415 § 23; Code 1881 § 2489; 1873 p 447 § 2; 1871 p 64 § 2; 1869 p 324 § 2; RRS § 5442. Formerly RCW 16.60.010, part.]

16.60.015 Liability for damages—Restraint—Notice. Any person making and maintaining in good repair around his or her enclosure or enclosures, any fence such as is described in RCW 16.60.010 and 16.60.011, may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals, so trespassing, may be taken and held as security for the payment of such damages and costs: *Provided*, That such person shall provide notice as required under RCW 16.04.020 and 16.04.025: *Provided further*, That such person shall have such fences examined and the damages assessed by three reliable, disinterested parties and practical farmers, within five days next after the trespass has been committed: *And, provided further*, That if, before trial, the owner of such trespassing animal or animals, shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterwards awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs and receive only the damages awarded. [1985 c 415 § 26; Code 1881 § 2490; 1873 p 447 § 3; 1871 p 64 § 3; 1869 p 324 § 3; RRS § 5443.]

Liability for damages—Restraint—1925 act: RCW 16.04.010.

16.60.020 Partition fence—Reimbursement. When any fence has been, or shall hereafter be, erected by any person on the boundary line of his land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure, so that such fence may also answer the purpose of inclosing his ground, he shall pay the owner of such fence already erected one-half of the value of so much thereof as serves for a partition fence between them: *Provided*, That in case such fence has woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his land fenced with hog fencing and uses the partition fence to make a hog enclosure of his land, then he shall pay to the one who owns said hog fence one-half of the value thereof. [1907 c 13 § 1; Code 1881 § 2491; 1873 p 448 § 4; 1871 p 65 § 4; 1869 p 324 § 4; RRS § 5444.]

Hog fencing: RCW 16.60.050.

16.60.030 Partition fence—Erection—Notice. When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the interest of one party said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land. [Code 1881 § 2492; 1873 p 448 § 5; 1871 p 65 § 5; 1869 p 325 § 5; RRS § 5445.]

16.60.040 Partition fence—Failure to build—Recovery of half of cost. If, after notice has been given by either party and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected, the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party. [Code 1881 § 2493; 1873 p 448 § 6; 1871 p 65 § 6; 1869 p 325 § 6; RRS § 5446.]

16.60.050 Partition fence—Hog fencing. The respective owners of adjoining inclosures shall keep up and maintain in good repair all partition fences between such inclosures in equal shares, so long as they shall continue to occupy or improve the same; and in case either of the parties shall desire to make such fence capable of turning hogs and the other party does not desire to use it for such purpose, then the party desiring to use it shall have the right to attach hog-fencing material to the posts of such fence, which hog fencing shall remain the property of the party who put it up, and he may remove it at any time he desires: *Provided*, That he leaves the fence in as good condition as it was when the hog fencing was by him attached, the natural decay of the posts excepted. The attaching of such hog fencing shall not relieve the other party from the duty of keeping in repair his part of such fence, as to all materials used in said fence additional to said hog fencing. [1907 c 13 § 2; Code 1881 § 2494; 1873 p 449 § 7; 1871 p 65 § 7; 1869 p 325 § 7; RRS § 5447.]

Reimbursement—Hog fencing: RCW 16.60.020.

16.60.055 Fence on the land of another by mistake—Removal. When any person shall unwittingly or by mistake, erect any fence on the land of another, and when by a line legally determined that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: *Provided*, That when the fence to be removed forms any part of a fence enclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since such division line was run. [Code 1881 § 2495; 1873 p 449 § 8; 1871 p 65 § 8; 1869 p 325 § 8; RRS § 5448. Formerly RCW 16.60.070.]

16.60.060 Partition fence—Discontinuance. When any party shall wish to lay open his inclosure, he shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such enclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in RCW 16.60.055. [Code 1881 § 2496; 1873 p 449 § 9; 1871 p 65 § 9; 1869 p 325 § 9; RRS § 5449.]

16.60.062 Assessing value of partition fence. In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in RCW 16.60.020. [Code 1881 § 2497; 1873 p 449 § 10; 1871 p 66 § 10; 1869 p 326 § 10; RRS § 5450.]

16.60.064 Impeachment of assessment—Damages. Upon the trial of any cause occurring under the provisions of RCW 16.60.010 through 16.60.076, the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages. [Code 1881 § 2498; 1873 p 449 § 11; 1871 p 66 § 11; 1869 p 326 § 11; RRS § 5451.]

16.60.075 Damages by breachy animals. The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals, that may be in company with such animal. [Code 1881 § 2499; 1873 p 449 § 12; 1871 p 66 § 12; 1869 p 326 § 12; RRS § 5452. Formerly RCW 16.04.090, part. FORMER PART OF SECTION: Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453, now codified as RCW 16.60.076.]

16.60.076 Proof. In case of actions for damages under RCW 16.60.010 through 16.60.076, it shall be sufficient to prove that the fence was lawful when the break was made. [Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453. Formerly RCW 16.04.090, part.]

16.60.080 Temporary gate across highway. Whenever any inhabitant of this state shall have his fences removed by floods or destroyed by fire, the county commissioners of the county in which he resides shall have power to grant a license or permit for him or her to put a convenient gate or gates across any highway for a limited period of time, to be named in their order, in order to secure him from depredations upon his crops until he can repair his fences, and they shall grant such license or permit for no longer period than they may think absolutely necessary. [Code 1881, Bagley's Supp., p 25 § 1; 1871 p 103 § 1; RRS § 5459. FORMER PART OF SECTION: Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460, now codified as RCW 16.60.085.]

16.60.085 Temporary gate across highway—Auditor may grant permit. It shall be lawful for the auditor

of any county to grant such permit in vacation, but his license shall not extend past the next meeting of the commissioner's court. [Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460. Formerly RCW 16.60.080, part.]

16.60.090 Failure to remove gate—Penalty. Any person retaining a gate across the highway after his license shall expire, shall be subject to a fine of one dollar for the first day and fifty cents for each subsequent day he shall retain the same, and it may be removed by the road supervisor, as an obstruction, at the cost of the person placing or keeping it upon the highway. [Code 1881, Bagley's Supp., p 25 § 3; 1871 p 104 § 3; RRS § 5461.]

16.60.095 Fees. The fees of the auditor under RCW 16.60.080 through 16.60.095 shall be paid by the applicant. [Code 1881, Bagley's Supp., p 25 § 4; 1871 p 104 § 4.]

Chapter 16.65

PUBLIC LIVESTOCK MARKETS

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16.65.010 Definitions. For the purposes of this chapter:

(1) The term "public livestock market" means any place, establishment or facility commonly known as a "public livestock market", "livestock auction market", "livestock sales ring", yards selling on commission, or the like, conducted or operated for compensation or profit as a public livestock market, consisting of pens or other enclosures, and their appurtenances in which livestock is received, held, sold, kept for sale or shipment. The term does not include the operation of a person licensed under this chapter to operate a special open consignment horse sale.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Director" means the director of the department or his duly authorized representative.

(4) "Licensee" means any person licensed under the provisions of this chapter.

(5) "Livestock" includes horses, mules, burros, cattle, sheep, swine, and goats.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(7) "Stockyard" means any place, establishment, or facility commonly known as a stockyard consisting of pens or other enclosures and their appurtenances in which livestock services such as feeding, watering, weighing, sorting, receiving and shipping are offered to the public: *Provided*, That stockyard shall not include any facilities where livestock is offered for sale at public auction, feed lots, or quarantined registered feed lots.

(8) "Packer" means any person engaged in the business of slaughtering, manufacturing, preparing meat or meat products for sale, marketing meat, meat food products or livestock products.

(9) "Deputy state veterinarian" means a graduate veterinarian authorized to practice in the state of Washington and appointed or deputized by the director as his duly authorized representative.

(10) "Special open consignment horse sale" means a sale conducted by a person other than the operator of a public livestock market which is limited to the consignment of horses and donkeys only for sale on an occasional and seasonal basis. [1983 c 298 § 1; 1961 c 182 § 1; 1959 c 107 § 1.]

16.65.015 Exemptions from chapter. This chapter does not apply to:

(1) A farmer selling his own livestock on the farmer's own premises by auction or any other method.

(2) A farmers' cooperative association or an association of livestock breeders when any class of their own livestock is assembled and offered for sale at a special sale on an occasional and seasonal basis under the association's management and responsibility, and the special sale has been approved by the director in writing. However, the special sale shall be subject to brand and health inspection requirements as provided in this chapter for sales at public livestock markets. [1983 c 298 § 2.]

16.65.020 Supervision of markets and special open consignment horse sales—Rules and regulations—

Interference with director's duties. Public livestock markets and special open consignment horse sales shall be under the direction and supervision of the director, and the director, but not his duly authorized representative, may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter and rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out any duties imposed upon him by this chapter or rules and regulations adopted hereunder. [1983 c 298 § 5; 1959 c 107 § 2.]

16.65.030 Public livestock market license required—Application—Fee—Issuance or renewal—Where and when valid. (1) On and after June 10, 1959, no person shall operate a public livestock market without first having obtained a license from the director. Application for such license or renewal thereof shall be in writing on forms prescribed by the director, and shall include the following:

(a) A legal description of the property upon which the public livestock market shall be located.

(b) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens and all facilities the applicant proposes to use in the operation of such public livestock market.

(c) A detailed statement showing all the assets and liabilities of the applicant.

(d) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(e) The weekly or monthly sales day or days on which the applicant proposes to operate his public livestock market sales.

(f) Projected source and quantity of livestock, by county, anticipated to be handled.

(g) Projected income and expense statements for the first year's operation.

(h) Facts upon which are based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(i) Such other information as the director may reasonably require.

(2) The director shall, after public hearing as provided by chapter 34.04 RCW, grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to all requirements and giving reasonable consideration at the same hearing to:

(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application; and

(b) The present market services elsewhere available to the trade area proposed to be served.

(3) Such application shall be accompanied by a license fee based on the average gross sales volume per official sales day of that market:

(a) Markets with an average gross sales volume up to and including ten thousand dollars, a one hundred dollar fee;

(b) Markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars, a two hundred dollar fee; and

(c) Markets with an average gross sales volume over fifty thousand dollars, a three hundred dollar fee.

(4) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each such public livestock market, and each such application shall be accompanied by the appropriate license fee.

(5) Upon the approval of the application by the director and compliance with the provisions of this chapter, the applicant shall be issued a license or renewal thereof.

Any license issued under the provisions of this chapter shall only be valid at location and for the sales day or days for which the license was issued. [1979 ex.s. c 91 § 1; 1971 ex.s. c 192 § 1; 1967 ex.s. c 120 § 5; 1961 c 182 § 2; 1959 c 107 § 3.]

16.65.040 Public livestock market license—Expiration—Penalty. All public livestock market licenses provided for in this chapter shall expire on March 1st subsequent to the date of issue. Any person who fails, refuses, or neglects to apply for a renewal of a preexisting license on or before the date of expiration, shall pay a penalty of twenty-five dollars, which shall be added to the regular license fee, before such license may be renewed by the director. [1983 c 298 § 6; 1979 ex.s. c 91 § 2; 1959 c 107 § 4.]

16.65.042 Special open consignment horse sale license required—Application—Fee—Where and when valid. (1) A person shall not operate a special open consignment horse sale without first obtaining a license from the director. The application for the license shall include:

(a) A detailed statement showing all of the assets and liabilities of the applicant;

(b) The schedule of rates and charges the applicant proposes to impose on the owners of horses for services rendered in the operation of the horse sale;

(c) The specific date and exact location of the proposed sale;

(d) Projected quantity and approximate value of horses to be handled; and

(e) Such other information as the director may reasonably require.

(2) The application shall be accompanied by a license fee of one hundred dollars. Upon the approval of the application by the director and compliance with this chapter, the applicant shall be issued a license. A special open consignment horse sale license is valid only for the specific date or dates and exact location for which the license was issued. [1983 c 298 § 3.]

16.65.050 Disposition of fees. All fees provided for under this chapter shall be retained by the director for the purpose of enforcing this chapter. [1959 c 107 § 5.]

16.65.060 License to be posted. The licensee's license shall be posted conspicuously in the main office of such licensee's public livestock market or special open consignment horse sale. [1983 c 298 § 7; 1959 c 107 § 6.]

16.65.080 Denial, suspension, revocation of license—Procedure. (1) The director is authorized to deny, suspend, or revoke a license in the manner prescribed herein, when there are findings by the director that any licensee (a) has been guilty of fraud or misrepresentation as to titles, charges, numbers, brands, weights, proceeds of sale, or ownership of livestock; (b) has attempted payment to a consignor by a check the licensee knows not to be backed by sufficient funds to cover such check; (c) has violated any of the provisions

of this chapter or rules and regulations adopted hereunder; (d) has violated any laws of the state that require health or brand inspection of livestock; (e) has violated any condition of the bond, as provided in this chapter. However, the director may deny a license if the applicant refuses to accept the sales day or days allocated to him under the provisions of this chapter.

(2) In all proceedings for revocation, suspension, or denial of a license the licensee or applicant shall be given an opportunity to be heard in regard to such revocation, suspension or denial of a license. The director shall give the licensee or applicant twenty days' notice in writing and such notice shall specify the charges or reasons for such revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearings shall be held in the city where the licensee has his principal place of business, or where the applicant resides, unless some other place be agreed upon by the parties, and the defendant may be represented by counsel.

(3) The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents anywhere in the state. The applicant or licensee shall have opportunity to be heard, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be recorded, and may be taken by deposition under such rules as the director may prescribe.

(4) The director shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, together with a record of all of the evidence, and serve upon the accused a copy of such findings and conclusions. [1985 c 415 § 9; 1971 ex.s. c 192 § 2; 1961 c 182 § 3; 1959 c 107 § 8.]

Appeal from denial, revocation, suspension of license: RCW 16.65.450.

16.65.090 Brand inspection—Consignor's fee—Minimum fee chargeable to licensee. The director shall provide for brand inspection. When such brand inspection is required the licensee shall collect from the consignor and pay to the department, as provided by law, a fee for brand inspection for each animal consigned to the public livestock market or special open consignment horse sale: *Provided*, That if in any one sale day the total fees collected for brand inspection do not exceed sixty dollars, then such licensee shall pay sixty dollars for such brand inspection or as much thereof as the director may prescribe. [1983 c 298 § 8; 1971 ex.s. c 192 § 3; 1959 c 107 § 9.]

16.65.100 Brand inspection—Purchaser's fee. The licensee of each public livestock market or special open consignment horse sale shall collect from any purchaser of livestock requesting brand inspection a fee as provided by law for each animal inspected. Such fee shall be in addition to the fee charged to the consignor for brand inspection and shall not apply to the minimum fee chargeable to the licensee. [1983 c 298 § 9; 1959 c 107 § 10.]

16.65.110 Charge for examining, testing, inoculating, etc.—Minimum fee. The director shall cause a charge to be made for any examining, testing, treating, or inoculation required by this chapter and rules and regulations adopted hereunder. Such charge shall be paid by the licensee to the department and such charge shall include the cost of the required drugs and a fee no larger than two dollars nor less than fifty cents for administration of such drugs to each animal and such fee shall be set at the discretion of the director. However, if the total fees payable to the department for such examining, testing, treating or inoculation do not exceed the actual cost to the department for such examining, testing, treating, or inoculation, or ten dollars (whichever is greater), the director shall require the licensee to pay the actual cost of such examining, testing, treating, or inoculation, or ten dollars (whichever is greater), to the department. [1959 c 107 § 11.]

16.65.120 Disposition of proceeds of sale—Limitations on licensee. A licensee shall not, except as provided in this chapter, pay the net proceeds or any part thereof arising from the sale of livestock consigned to the said licensee for sale, to any person other than the consignor of such livestock except upon an order from a court of competent jurisdiction, unless (1) such licensee has reason to believe that such person is the owner of the livestock; (2) such person holds a valid unsatisfied mortgage or lien upon the particular livestock, or (3) such person holds a written order authorizing such payment executed by the owner at the time of or immediately following the consignment of such livestock. [1959 c 107 § 12.]

16.65.130 Unlawful use of consignor's net proceeds. It shall be unlawful for the licensee to use for his own purposes consignor's net proceeds, or funds received by such licensee to purchase livestock on order, through recourse to the so-called "float" in the bank account, or in any other manner. [1959 c 107 § 13.]

16.65.140 "Custodial account for consignor's proceeds"—Composition, use—Accounts and records. Each licensee shall establish a custodial account for consignor's proceeds. All funds derived from the sale of livestock handled on a commission or agency basis shall be deposited in that account. Such account shall be drawn on only for the payment of net proceeds to the consignor, or such other person or persons of whom such licensee has knowledge is entitled to such proceeds, and to obtain from such proceeds only the sums due the licensee as compensation for his services as are set out in his tariffs, and for such sums as are necessary to pay all legal charges against the consignment of livestock which the licensee in his capacity as agent is required to pay for on behalf of the consignor or shipper. The licensee in each case shall keep such accounts and records that will at all times disclose the names of the consignors and the amount due and payable to each from the funds in the custodial account for consignor's proceeds. The licensee

shall maintain the custodial account for consignor's proceeds in a manner that will expedite examination by the director and reflect compliance with the requirements of this section. [1971 ex.s. c 192 § 4; 1959 c 107 § 14.]

16.65.150 Penalty for failure to disclose unsatisfied lien, mortgage. The delivery of livestock, for the purpose of sale, by any consignor or vendor to a public livestock market or special open consignment horse sale without making a full disclosure to the agent or licensee of such public livestock market or special open consignment horse sale of any unsatisfied lien or mortgage upon such livestock shall constitute a gross misdemeanor. [1983 c 298 § 10; 1959 c 107 § 15.]

16.65.160 Delivery of proceeds and invoice to consignor or shipper. The licensee shall deliver the net proceeds together with an invoice to the consignor or shipper within twenty-four hours after the sale or by the end of the next business day if the licensee is not on notice that any other person or persons have a valid interest in the livestock. [1959 c 107 § 16.]

16.65.170 Records of licensee—Contents. The licensee shall keep accurate records which shall be available for inspection to all parties directly interested therein, and such records shall contain the following information:

(1) The date on which each consignment of livestock was received and sold.

(2) The name and address of the buyer and seller of such livestock.

(3) The number and species of livestock received and sold.

(4) The marks and brands on such livestock as supplied by a brand inspector.

(5) All statements of warranty or representations of title material to, or upon which, any such sale is consummated.

(6) The gross selling price of such livestock with a detailed list of all charges deducted therefrom.

Such records shall be kept by the licensee for one year subsequent to the receipt of such livestock. [1967 c 192 § 1; 1959 c 107 § 17.]

16.65.180 Unjust, unreasonable, discriminatory rates or charges prohibited. All rates or charges made for any stockyard services furnished at a public livestock market or special open consignment horse sale shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. [1983 c 298 § 11; 1959 c 107 § 18.]

16.65.190 Schedule of rates and charges. No person shall hereafter operate a public livestock market or special open consignment horse sale unless such person has filed a schedule with the application for license to operate such public livestock market or special open consignment horse sale. Such schedule shall show all rates and charges for stockyard services to be furnished by

such person at such public livestock market or special open consignment horse sale.

(1) Schedules shall be posted conspicuously at the public livestock market or special open consignment horse sale, and shall plainly state all such rates and charges in such detail as the director may require, and shall state any rules and regulations which in any manner change, affect, or determine any part of the aggregate of such rates or charges, or the value of the stockyard services furnished. The director may determine and prescribe the form and manner in which such schedule shall be prepared, arranged and posted.

(2) No changes shall be made in rates or charges so filed and published except after thirty days' notice to the director and to the public filed and posted as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect.

(3) No licensee shall charge, demand or collect a greater or a lesser or a different compensation for such service than the rates and charges specified in the schedule filed with the director and in effect at the time; nor shall a licensee refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from properly returning to its members, on a patronage basis, its excess earnings on their livestock); nor shall a licensee extend to any person at such public livestock market or special open consignment horse sale any stockyard services except such as are specified in such schedule. [1983 c 298 § 12; 1959 c 107 § 19.]

16.65.200 Licensee's bond to operate market or special open consignment horse sale. Before the license is issued to operate a public livestock market or special open consignment horse sale, the applicant shall execute and deliver to the director a surety bond in a sum as herein provided for, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be a standard form and approved by the director as to terms and conditions. Said bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules and/or regulations adopted hereunder. Said bond shall be to the state in favor of every consignor and/or vendor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale: *Provided*, That if such applicant is bonded as a market agency under the provisions of the packers and stockyards act, (7 U.S.C. 181) as amended, on March 20, 1961, in a sum equal to or greater than the sum required under the provisions of this chapter, and such applicant furnishes the director with a bond approved by the United States secretary of agriculture naming the department as trustee, the director may accept such bond and its method of termination in lieu of the bond provided for herein and issue a license if such applicant meets all the other requirements of this chapter.

The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of such

bond. Every bond filed with and approved by the director shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. The surety on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110 concerning notice and proof of service, as enacted or hereafter amended, but this shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110 concerning notice and proof of service as enacted or hereafter amended, and unless the principal shall before the expiration of such period, file a new bond, the director shall forthwith cancel the principal's license. [1983 c 298 § 13; 1971 ex.s. c 192 § 5; 1961 c 182 § 4. Prior: 1959 c 107 § 20.]

16.65.210 Licensee's bond to operate market—Amount determined by prior business operations—Minimum amount. The sum of the bond to be executed by an applicant for a public livestock market license shall be determined in the following manner:

(1) Determine the dollar volume of business carried on, at, or through, such applicant's public livestock market in the twelve-month period prior to such applicant's application for a license.

(2) Divide such dollar volume of business by the number of official sale days granted such applicant's public livestock market, as herein provided, in the same twelve-month period provided for in subsection (1).

(3) Bond amount shall be that amount obtained by the formula in subsection (2) except that it shall not be an amount less than ten thousand dollars and if that amount shall exceed fifty thousand then that portion above fifty thousand shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest five thousand figure above that arrived at in the formula. [1971 ex.s. c 192 § 6; 1959 c 107 § 21.]

16.65.220 Licensee's bond to operate market—Amount when no prior business operations—Minimum and maximum amount. If the application for a license to operate a public livestock market is from a new public livestock market which has not operated in the past twelve-month period, the director shall determine a bond, in a reasonable sum, that the applicant shall execute in favor of the state, which shall not be less than ten thousand dollars nor greater than twenty-five thousand dollars: *Provided*, That the director may at any time, upon written notice, review the licensee's operations and determine whether, because of increased or decreased sales, the amount of the bond should be altered. [1971 ex.s. c 192 § 7; 1959 c 107 § 22.]

16.65.230 Licensee's bond to operate market—One bond for each market. Any licensee operating more than one public livestock market shall execute a bond, as

herein provided, for each such licensed public livestock market. [1959 c 107 § 23.]

16.65.232 Licensee's bond to operate special open consignment horse sale—Amount determined by estimate of business—Minimum amount. The sum of the bond to be executed by an applicant for a special open consignment horse sale license shall be determined by estimating the dollar volume of business to be carried on, at, or through the applicant's proposed special open consignment horse sale. The bond amount shall be that amount estimated as the applicant's dollar volume of business. However, the bond shall not be in an amount less than ten thousand dollars. If the amount exceeds fifty thousand dollars, then that portion above fifty thousand dollars shall be at the rate of ten percent of that value, except that the amount of the bond shall be to the nearest greater five thousand dollar figure. [1983 c 298 § 4.]

16.65.235 Cash or other security in lieu of surety bond. In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules and regulations necessary for the administration of such security. [1973 c 142 § 3.]

16.65.240 Action on bond—Fraud of licensee. Any vendor or consignor creditor claiming to be injured by the fraud of any licensee may bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by such fraud. [1959 c 107 § 24.]

16.65.250 Action on bond—Failure to comply with chapter. The director or any vendor or consignor creditor may also bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter and the rules and/or regulations adopted hereunder. [1959 c 107 § 25.]

16.65.260 Licensee's failure to pay vendor, consignor—Complaint—Director's powers and duties. In case of failure by a licensee to pay amounts due a vendor or consignor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale, as evidenced by a verified complaint filed with the director, the director may proceed forthwith to ascertain the names and addresses of all vendor or consignor creditors of such licensee, together with the amounts due and owing to them and each of them by such licensee, and shall request all such vendor and consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known vendor or consignor creditor at his last known address. [1983 c 298 § 14; 1959 c 107 § 26.]

16.65.270 Licensee's failure to pay vendor, consignor—Failure of vendor, consignor to file claim. If a

vendor or consignor creditor so addressed fails, refuses or neglects to file in the office of the director his verified claim as requested by the director within sixty days from the date of such request, the director shall thereupon be relieved of further duty or action hereunder on behalf of said producer or consignor creditor. [1959 c 107 § 27.]

16.65.280 Licensee's failure to pay vendor, consignor—Duties of director when names of creditors not available. Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all said vendor and consignor creditors, the director, after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered. [1959 c 107 § 28.]

16.65.290 Licensee's failure to pay vendor, consignor—Settlement, compromise of claims—Demand on bond—Discharge. Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. [1959 c 107 § 29.]

16.65.300 Licensee's failure to pay vendor, consignor—Refusal by surety company to pay demand—Action on bond—New bond, suspension or revocation of license on failure to file. Upon the refusal of the surety company to pay the demand, the director may thereupon bring an action on the bond in behalf of said vendor and consignor creditors. Upon any action being commenced on said bond, the director may require the filing of a new bond. Immediately upon the recovery in any action on such bond such licensee shall file a new bond. Upon failure to file the same within ten days, in either case, such failure shall constitute grounds for the suspension or revocation of his license. [1959 c 107 § 30.]

16.65.310 Licensee's failure to pay vendor, consignor—Settlement, compromise—Creditors share—Priority of state's claim. In any settlement or compromise by the director with a surety company as provided in RCW 16.65.290, where there are two or more consignor and/or vendor creditors that have filed claims, either fixed or contingent, against a licensee's bond, such creditors shall share pro rata in the proceeds of the bond to the extent of their actual damage: *Provided*, That the claims of the state and the department which may accrue from the conduct of the licensee's public livestock market shall have priority over all other claims. [1959 c 107 § 31.]

16.65.320 Investigations by director—Complaints. For the purpose of enforcing the provisions of this chapter, the director on the director's own motion or upon the verified complaint of any vendor or consignor against any licensee, or agent, or any person assuming or attempting to act as such, shall have full authority to make any and all necessary investigations. The director is empowered to administer oaths of verification of such complaints. [1985 c 415 § 10; 1959 c 107 § 32.]

16.65.330 Investigations—Powers of director. For the purpose of making investigations as provided for in RCW 16.65.320, the director may enter a public livestock market and examine any records required under the provisions of this chapter. The director shall have full authority to issue subpoenas requiring the attendance of witnesses before him, together with all books, memorandums, papers, and other documents relative to the matters under investigation, and to administer oaths and take testimony thereunder. [1959 c 107 § 33.]

16.65.340 Testing, examination, etc., of livestock for disease. The director shall, when livestock is sold, traded, exchanged or handled at or through a public livestock market, require such testing, treating, identifying, examining and record keeping of such livestock by a deputy state veterinarian as in the director's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, paratuberculosis, hog cholera or any other infectious, contagious or communicable disease among the livestock of this state. [1967 c 192 § 2; 1959 c 107 § 34.]

16.65.350 Examinations, inspections, sanitary and health practices—Suspension, revocation of license. (1) The director shall perform all tests and make all examinations required under the provisions of this chapter and rules and regulations adopted hereunder: *Provided*, That veterinary inspectors of the United States department of agriculture may be appointed by the director to make such examinations and tests as are provided for in this chapter without bond or compensation, and shall have the same authority and power in this state as a deputy state veterinarian.

(2) The director shall have the responsibility for the direction and control of sanitary practices and health practices and standards and for the examination of animals at public livestock markets. The deputy state veterinarian at any such public livestock market shall notify the licensee or his managing agent, in writing, of insanitary practices or conditions. Such deputy state veterinarian shall notify the director if the improper sanitary practices or conditions are not corrected within the time specified. The director shall investigate and upon finding such report correct shall take appropriate action to hold a hearing on the suspension or revocation of the licensee's license. [1959 c 107 § 35.]

16.65.360 Facilities—Sanitation—Requirements. Licensees shall provide facilities and sanitation for the prevention of livestock diseases at their public livestock markets, as follows:

(1) The floors of all pens and alleys that are part of a public livestock market shall be constructed of concrete or similar impervious material and kept in good repair, with a slope of not less than one-fourth inch per foot to adequate drains leading to an approved sewage system: *Provided*, That the director may designate certain pens within such public livestock markets as feeding and holding pens and the floors and alleys of such pens shall not be subject to the aforementioned surfacing requirements.

(2) Feeding and holding pens maintained in an area adjacent to a public livestock market shall be constructed and separated from such public livestock market, in a manner prescribed by the director, in order to prevent the spread of communicable diseases to the livestock sold or held for sale in such public livestock market.

(3) All yards, chutes and pens used in handling livestock shall be constructed of such materials which will render them easily cleaned and disinfected, and such yards, pens and chutes shall be kept clean, sanitary and in good repair at all times, as required by the director.

(4) Sufficient calf pens of adequate size to prevent overcrowding shall be provided, and such pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(5) All swine pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.

(6) A water system carrying a pressure of forty pounds and supplying sufficient water to thoroughly wash all pens, floors, alleys and equipment shall be provided.

(7) Sufficient quarantine pens of adequate capacity shall be provided. Such pens shall be used to hold only cattle reacting to brucellosis and tuberculosis or to quarantine livestock with other contagious or communicable diseases and shall be:

(a) hard surfaced with concrete or similar impervious material and shall be kept in good repair;

(b) provided with separate watering facilities;

(c) painted white with the word "quarantine" painted in red letters not less than four inches high on such quarantine pen's gate;

(d) provided with a tight board fence not less than five and one-half feet high;

(e) cleaned and disinfected not later than one day subsequent to the date of sale.

To prevent the spread of communicable diseases among livestock, the director shall have the authority to cause the cleaning and disinfecting of any area or all areas of a public livestock market and equipment or vehicles with a complete coverage of disinfectants approved by the director. [1959 c 107 § 36.]

16.65.370 Watering, feeding facilities—Unlawful acts. Pens used to hold livestock for a period of twenty-four hours or more shall have watering and feeding facilities for livestock held in such pens; it shall be unlawful to hold livestock for a period longer than twenty-four hours in such pens without feeding and watering such livestock. [1959 c 107 § 37.]

16.65.380 Adequate facilities and space required for veterinarians to function. Public livestock market facilities shall include adequate space and facilities necessary for deputy state veterinarians to properly carry out their functions as prescribed by law and rules and regulations adopted hereunder. [1959 c 107 § 38.]

16.65.390 Adequate space and facilities required for brand inspectors to function. Public livestock market facilities shall include space and facilities necessary for brand inspectors to properly carry out their duties, as provided by law and rules and regulations adopted hereunder, in a safe and expeditious manner. [1959 c 107 § 39.]

16.65.400 Weighing of livestock at public livestock market. (1) Each public livestock market licensee shall maintain and operate approved weighing facilities for the weighing of livestock at such licensee's public livestock market.

(2) All dial scales used by the licensee shall be of adequate size to be readily visible to all interested parties and shall be equipped with a mechanical weight recorder.

(3) All beam scales used by the licensee shall be equipped with a balance indicator, a weigh beam and a mechanical weight recorder, all readily visible to all interested parties.

(4) All scales used by the licensee shall be checked for balance at short intervals during the process of selling and immediately prior to the beginning of each sale day.

(5) The scale ticket shall have the weights mechanically imprinted upon such tickets when the weigh beam is in balance during the process of weighing, and shall be issued in triplicate, for all livestock weighed at a public livestock market. A copy of such weight tickets shall be issued to the buyer and seller of the livestock weighed. [1983 c 298 § 15; 1961 c 182 § 5; 1959 c 107 § 40.]

16.65.410 Packer's interest in market limited. It shall be unlawful for a packer to own or control more than a twenty percent interest in any public livestock market, directly or indirectly through stock ownership or control, or otherwise by himself or through his agents or employees. [1959 c 107 § 41.]

16.65.420 Application for sales day for new salesyard, change of or additional sales days, special sales—Considerations for allocation. (1) Any application for sales days or days for a new salesyard, and any application for a change of sales day or days or additional sales day or days for an existing yard shall be subject to approval by the director, subsequent to a hearing as provided for in this chapter and the director is hereby authorized to allocate these dates and type and class of livestock which may be sold on these dates. In considering the allocation of such sales days, the director shall give appropriate consideration, among other relevant factors, to the following:

(a) The geographical area which will be affected;

(b) The conflict, if any, with sales days already allocated in the area;

(c) The amount and class of livestock available for marketing in the area;

(d) Buyers available to such market;

(e) Any other conditions affecting the orderly marketing of livestock.

(2) No special sales shall be conducted by the licensee unless the licensee has applied to the director in writing fifteen days prior to such proposed sale and such sale date shall be approved at the discretion of the director. [1963 c 232 § 16; 1961 c 182 § 6. Prior: 1959 c 107 § 42.]

16.65.422 Special sales of purebred livestock. A producer of purebred livestock may, upon obtaining a permit from the director, conduct a public sale of the purebred livestock on an occasional or seasonal basis on premises other than his own farm. Application for such special sale shall be in writing to the director for his approval at least fifteen days before the proposed public sale is scheduled to be held by such producer. [1963 c 232 § 17.]

16.65.423 Limited public livestock market license, sale of horses and/or mules—Sales days. The director shall have the authority to issue a public livestock market license pursuant to the provisions of this chapter limited to the sale of horses and/or mules and to allocate a sales day or days to such licensee. The director is hereby authorized and directed to adopt regulations for facilities and sanitation applicable to such a license. The facility requirements of RCW 16.65.360 shall not be applicable to such licensee's operation as provided for in this section. [1983 c 298 § 16; 1963 c 232 § 18.]

16.65.424 Additional sales days limited to sales of horses and/or mules. The director shall have the authority to grant a licensee an additional sales day or days limited to the sale of horses and/or mules and may if requested grant the licensee, by permit, the authority to have the sale at premises other than at his public livestock market if the facilities are approved by the director as being adequate for the protection of the health and safety of such horses and/or mules. For the purpose of such limited sale the facility requirements of RCW 16.65.360 shall not be applicable. [1963 c 232 § 19.]

16.65.430 Information and records available to director and news services. Information and records of the licensee that are necessary for the compilation of adequate reports on the marketing of livestock shall be made available to the director or any news service, publishing or broadcasting such market reports. [1959 c 107 § 43.]

16.65.440 Penalty. Any person who shall violate any provisions or requirements of this chapter or rules and regulations adopted by the director pursuant to this chapter shall be deemed guilty of a misdemeanor; and

any subsequent violation thereafter shall be deemed a gross misdemeanor. [1959 c 107 § 44.]

16.65.445 Hearings. The director shall hold public hearings upon a proposal to promulgate any new or amended regulations and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other contested case, and shall comply in all respects with chapter 34.04 RCW (administrative procedure act) as now enacted or hereafter amended. [1961 c 182 § 7.]

16.65.450 Appeal from denial, suspension, revocation of license. Any licensee or applicant who has had his or its license revoked, suspended or denied by the director and feels himself or itself aggrieved by said order may appeal to the superior court of the county in the state of Washington of the residence of the licensee or applicant where the trial on such appeal shall be held de novo. [1959 c 107 § 46.]

16.65.900 Severability—1959 c 107. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 107 § 45.]

16.65.910 Severability—1963 c 232. See RCW 15.61.900.

Chapter 16.67

WASHINGTON STATE BEEF COMMISSION ACT

Sections

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16.67.010 Short title. This chapter shall be known and may be cited as the Washington state beef commission act. [1969 c 133 § 1.]

16.67.020 Purpose of chapter. This chapter is passed:

(1) In the exercise of the power of the state to provide for economic development of the state, to promote the welfare of the state, and stabilize and protect the beef industry of the state;

(2) Because the beef and beef products produced in Washington comprise one of the major agricultural crops of Washington, and therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(3) Because it is desirable and expedient to enhance the reputation of Washington beef and beef products in domestic, national and international markets;

(4) Because it is desirable to promote knowledge of the health-giving qualities, food and dietetic value of beef and beef products of the nation and Washington beef and beef products in particular for the expanded development of the beef industry;

(5) Because the stabilizing of the beef industry, the enlargement of its markets, and the increased consumption of beef and beef products are desirable to assure payment of taxes to the state and its subdivisions, to alleviate unemployment and to provide for higher wage scales for agricultural labor and maintenance of our high standard of living;

(6) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only beef and beef products of the highest standard of quality, the methods and care used in their preparation for market, and the methods of sale and distribution, to increase the amount secured by the producer therefor, so they may pay higher wages and pay their taxes, and by such information reduce the cost of marketing and distribution to the extent that the spread between the cost to consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and

(7) To protect the public by educating it in reference to the various cuts and grades of Washington beef and the uses to which each should be put. [1969 c 133 § 19.]

16.67.030 Definitions. For the purpose of this chapter:

(1) "Commission" means the Washington state beef commission.

(2) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.

(3) "Ex officio members" means those advisory members of the commission who do not have a vote.

(4) "Department" means the department of agriculture of the state of Washington.

(5) "Person" includes any individual, firm, corporation, trust, association, partnership, society, or any other organization of individuals.

(6) "Beef producer" means any person who raises, breeds, grows, or purchases cattle or calves for beef production.

(7) "Dairy (beef) producer" means any person who raises, breeds, grows, or purchases cattle for dairy production and who is actively engaged in the production of fluid milk.

(8) "Feeder" means any person actively engaged in the business of feeding cattle and usually operating a feed lot.

(9) "Producer" means any person actively engaged in the cattle industry including beef producers and dairy (beef) producers.

(10) "Washington cattle" shall mean all cattle owned or controlled by affected producers and located in the state of Washington.

(11) "Meat packer" means any person licensed to operate a slaughtering establishment under the provisions of chapter 16.49A RCW as enacted or hereafter amended.

(12) "Livestock salesyard operator" means any person licensed to operate a cattle auction market or salesyard under the provisions of chapter 16.65 RCW as enacted or hereafter amended. [1969 c 133 § 2.]

16.67.040 Beef commission created—Composition—Quorum—Qualifications of members. There is hereby created a Washington state beef commission to be thus known and designated. The commission shall be composed of three beef producers, one dairy (beef) producer, three feeders, one livestock salesyard operator, and one meat packer. In addition there will be one ex officio member without the right to vote from the department of agriculture to be designated by the director thereof.

A majority of voting members shall constitute a quorum for the transaction of any business.

All appointed members as stated in RCW 16.67.060 shall be citizens and residents of this state, over the age of twenty-five years, each of whom is and has been actually engaged in that phase of the cattle industry he represents for a period of five years, and has during that period derived a substantial portion of his income therefrom, or have a substantial investment in cattle as an owner, lessee, partner, or a stockholder owning at least ten percent of the voting stock in a corporation engaged in the production of cattle or dressed beef, or a manager or executive officer of such corporation. Producer members of the commission shall not be directly engaged in the business of being a meat packer, or as a feeder, feeding cattle other than their own. Said qualifications must continue throughout each member's term of office. [1969 c 133 § 3.]

16.67.050 Designation of positions—Terms. The appointive positions on the commission shall be designated as follows: The three beef producers shall be designated positions one, two and three; the dairy (beef) producer shall be designated position four; the three feeders shall be designated positions five, six and seven;

the livestock salesyard operator shall be designated position eight; the meat packer shall be designated position nine.

The regular term of office shall be three years from the date of appointment and until their successors are appointed: *Provided*, That the first terms of the members whose terms began on July 1, 1969 shall be as follows: Positions one, four and seven shall terminate July 1, 1970; positions two, five and eight shall terminate July 1, 1971; positions three, six and nine shall terminate July 1, 1972. [1969 c 133 § 4.]

16.67.060 Governor to appoint members. The governor shall appoint the members of the commission. In making such appointments, the governor shall take into consideration recommendations made to him by organizations who represent or who are engaged in the same type of production or business as the person recommended for appointment as a member of the commission.

The appointment shall be carried out immediately, subsequent to June 1, 1969 and members so appointed as set forth in this chapter shall serve for the periods set forth for the original members of the commission in RCW 16.67.050. [1969 c 133 § 5.]

16.67.070 Vacancies—Compensation and travel expenses. In the event a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the unexpired term of such position shall be filled by the governor forthwith.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 19; 1975-'76 2nd ex.s. c 34 § 22; 1969 c 133 § 6.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

16.67.080 Commission records as evidence. Copies of the proceedings, records, and acts of the commission, when certified by the secretary of the commission and authenticated by the commission seal, shall be admissible in any court as prima facie evidence of the truth of the statements contained therein. [1969 c 133 § 7.]

16.67.090 Powers and duties. The powers and duties of the commission shall include the following:

(1) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(2) To elect a chairman and such other officers as it deems advisable;

(3) To employ and discharge at its discretion a manager, secretary, and such other personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the commission determines are necessary and proper to

carry out the purposes of this chapter, and to prescribe their duties and powers and fix their compensation;

(4) To adopt, rescind, and amend rules, regulations and orders for the exercise of its powers hereunder subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act) as now or hereafter amended;

(5) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the commission. All records, books and minutes of the commission shall be kept at such headquarters;

(6) To require a bond of all commission members and employees of the commission in a position of trust in the amount the commission shall deem necessary. The premium for such bond or bonds shall be paid by the commission from assessments collected. Such bond shall not be necessary if any such commission member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(7) To establish a beef commission revolving fund, such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the commission, except an amount of petty cash for each day's needs not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable; none of the provisions of RCW 43.01.050 as now or hereafter amended shall apply to money collected under this chapter;

(8) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(9) To incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(10) To borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(11) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, expenditures, moneys and other financial transactions made and done pursuant to this chapter. Such records, books and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within thirty days after completion thereof to the director, the state auditor and the commission. On such years and in such event the state auditor is unable to audit the records, books and accounts within six months following the close of the audit period it shall be mandatory that the commission employ a private auditor to make such audit;

(12) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(13) To cooperate with any other local, state, or national commission, organization or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in work or activities similar to the work and activities of the commission

created by this chapter and make contracts and agreements with such organizations or agencies for carrying on joint programs beneficial to the beef industry;

(14) To accept grants, donations, contributions or gifts from any governmental agency or private source for expenditures for any purpose consistent with the provisions of this chapter;

(15) To operate jointly with beef commissions or similar agencies established by state laws in adjoining states. [1982 c 81 § 3; 1969 c 133 § 8.]

16.67.100 Meetings—Notice. The commission shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the commission.

The commission shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the commission at least ten days prior to the meeting by public notice of such meeting published in newspapers of general circulation in the state of Washington, by radio and press releases and through trade publications.

The commission shall establish by resolution, the time, place and manner of calling special meetings of the commission with reasonable notice to the members: *Provided*, That, the notice of any special meeting may be waived by a waiver thereof by each member of the commission. [1969 c 133 § 9.]

16.67.110 Promotional programs, research, rate studies, labeling. The commission shall provide for programs designed to increase the consumption of beef; develop more efficient methods for the production, processing, handling and marketing of beef; eliminate transportation rate inequalities on feed grains and supplements and other production supplies adversely affecting Washington producers; properly identify beef and beef products for consumers as to quality and origin. For these purposes the commission may:

(1) Provide for programs for advertising, sales promotion and education, locally, nationally or internationally, for maintaining present markets and/or creating new or larger markets for beef. Such programs shall be directed toward increasing the sale of beef without reference to any particular brand or trademark and shall neither make use of false or unwarranted claims in behalf of beef nor disparage the quality, value, sale or use of any other agricultural commodity;

(2) Provide for research to develop and discover the health, food, therapeutic and dietetic value of beef and beef products thereof;

(3) Make grants to research agencies for financing studies, including funds for the purchase or acquisition of equipments and facilities, in problems of beef production, processing, handling and marketing;

(4) Disseminate reliable information founded upon the research undertaken under this chapter or otherwise available;

(5) Provide for rate studies and participate in rate hearings connected with problems of beef production, processing, handling or marketing; and

(6) Provide for proper labeling of beef and beef products so that the purchaser and the consuming public of the state will be readily apprised of the quality of the product and how and where it was processed. [1969 c 133 § 10.]

16.67.120 Levy of assessment—Exemption—Levy and collection under federal order. (1) Except as provided in subsection (2) of this section, there is hereby levied an assessment of fifty cents per head on all Washington cattle sold in this state or elsewhere to be paid by the seller at the time of sale: *Provided*, That if the assessment levied pursuant to this section is greater than one percent of the sales price, the animal is exempt from the assessment unless the federal order implementing the national beef promotion and research program establishes an assessment on these animals: *Provided further*, That if such sale is accompanied by a brand inspection by the department such assessment shall be collected at the same time, place and in the same manner as brand inspection fees. Such fees shall be collected by the livestock services division of the department and transmitted to the commission: *Provided further*, That, if such sale is made without a brand inspection by the department the assessment shall be paid by the seller and transmitted directly to the commission not later than thirty days following the sale.

(2) While the federal order implementing the national beef promotion and research program is in effect, the assessment to be levied and the procedures for its collection shall be as required by the federal order and as described by rules adopted by the commission. [1987 c 393 § 11; 1986 c 190 § 2; 1982 c 47 § 1; 1975 1st ex.s. c 93 § 1; 1969 c 133 § 11.]

16.67.122 Additional assessment—National beef research and promotion program—Contingency. In addition to the assessment authorized pursuant to RCW 16.67.120, the commission shall have the authority to collect an additional assessment of fifty cents per head for cattle subject to assessment by federal order for the purpose of providing funds for a national beef promotion and research program. The manner in which this assessment will be levied and collected shall be established by rule. The authority to collect this assessment shall be contingent upon the implementation of federal legislation providing for a national beef promotion and research program and the establishment of the assessment requirement to fund its activities. [1986 c 190 § 1.]

16.67.123 Transfer of cattle by meat packer as sale. The transfer of cattle owned by a meat packer from a feed lot to a slaughterhouse for slaughter shall be deemed a sale of such cattle for the purpose of chapter 16.67 RCW. Such packer shall pay directly to the beef commission the same assessment as required of all other cattle owners selling cattle. [1971 c 64 § 1.]

16.67.130 Assessments personal debt—Delinquent charge—Civil action to collect. Any due and payable assessment levied under the provisions of this chapter shall constitute a personal debt of every person so assessed or who otherwise owes the same and shall be due and payable within thirty days from the date it becomes first due the commission. In the event any such person fails to pay the full amount within such thirty days, the commission shall add to such unpaid assessment an amount of ten percent of the unpaid assessment to defray the cost of collecting the same. In the event of failure of such person to pay such due and payable assessment, the commission may bring civil action against such person in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon and any other additional necessary reasonable costs including attorneys' fees. Such action shall be tried and judgment rendered as in any other cause of action for debt due and payable. [1969 c 133 § 12.]

16.67.140 Livestock purchasers to provide list of sellers to commission. The commission may adopt regulations requiring the purchasers of livestock subject to the assessments under this chapter, to furnish the commission with the names of persons from whom such livestock was purchased. Refusal or failure to furnish the commission with such a list shall constitute a misdemeanor. [1969 c 133 § 13.]

16.67.150 Sales of milk production animals exempted from assessment—Exception. The assessment provided for in RCW 16.67.120 shall not be applicable to any animal sold for milk production unless the federal order implementing the national beef promotion and research program establishes an assessment on the animals. [1986 c 190 § 3; 1969 c 133 § 14.]

16.67.160 Liability of commission's assets—Immunity of state, commission employees, etc. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member officer, employee or agent of the commission in his individual capacity. The members of the commission including employees of the commission shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member. [1969 c 133 § 15.]

16.67.170 Promotional printing not restricted by public printer laws. The restrictive provisions of chapter 43.78 RCW, as now or hereafter amended, shall not apply to promotional printing and literature for the commission. [1969 c 133 § 16.]

Public printer—Public printing: Chapter 43.78 RCW.

16.67.900 Liberal construction—1969 c 133. This chapter shall be liberally construed. [1969 c 133 § 20.]

16.67.910 Severability—1969 c 133. If any provisions hereof are declared invalid, the validity of the remainder hereof of the applicability thereof to any other person, circumstances or thing shall not be affected thereby. [1969 c 133 § 17.]

16.67.920 Effective date—1969 c 133. This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1969. [1969 c 133 § 21.]

Chapter 16.68

DISPOSAL OF DEAD ANIMALS

Sections

16.68.010	Definitions.
16.68.020	Duty to bury carcass of diseased animal—Dead animal presumed diseased.
16.68.030	Sale, gift, or conveyance prohibited—Exceptions.
16.68.040	License required of rendering plants and independent collectors.
16.68.050	Rendering plant license fee.
16.68.060	Independent collector license fee.
16.68.070	Substation or places of transfer license fee.
16.68.080	Expiration of license—Revocation.
16.68.090	Applications for license.
16.68.100	Procedure upon application—Inspection of premises.
16.68.110	Duty of licensees as to premises.
16.68.120	Duty of licensees—Standards.
16.68.130	Right of access to premises and records.
16.68.140	Unlawful possession of horse meat—Exceptions.
16.68.150	Feeding of carcasses to swine unlawful—Exception.
16.68.160	Disposition of fees.
16.68.170	Rules and regulations.
16.68.180	Penalty for violations.
16.68.190	Exception as to use for bait for trapping purposes.

16.68.010 Definitions. For the purposes of this chapter, unless clearly indicated otherwise by the context:

- (1) "Director" means the director of agriculture;
- (2) "Meat food animal" means cattle, horses, mules, asses, swine, sheep and goats;
- (3) "Dead animal" means the body of a meat food animal, or any part or portion thereof: *Provided*, That the following dead animals are exempt from the provisions of this chapter:

(a) Edible products from a licensed slaughtering establishment;

(b) Edible products where the meat food animal was slaughtered under farm slaughter permit;

(c) Edible products where the meat food animal was slaughtered by a bona fide farmer on his own ranch for his own consumption;

(d) Hides from meat food animals that are properly identified as to ownership and brands;

(4) "Carcass" means all parts, including viscera, of a dead meat food animal;

(5) "Person" means any individual, firm, corporation, partnership, or association;

(6) "Rendering plant" means any place of business or location where dead animals or any part or portion thereof, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other byproduct whatsoever;

(7) "Substation" means a properly equipped and authorized concentration site for the temporary storage of dead animals or packing house refuse pending final delivery to a licensed rendering plant;

(8) "Place of transfer" means an authorized reloading site for the direct transfer of dead animals or packing house refuse from the vehicle making original pickup to the line vehicle that will transport the dead animals or packing house refuse to a specified licensed rendering plant;

(9) "Independent collector" means any person who does not own a licensed rendering plant within the state of Washington but is properly equipped and licensed to transport dead animals or packing house refuse to a specified rendering plant. [1949 c 100 § 1; Rem. Supp. 1949 § 3142-1.]

Severability—1949 c 100: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, nor any section, sentence, phrase, or word thereof not adjudged invalid or unconstitutional." [1949 c 100 § 20.] This applies to RCW 16.68.010 through 16.68.190.

16.68.020 Duty to bury carcass of diseased animal—Dead animal presumed diseased. Every person owning or having in charge any animal that has died or been killed on account of disease shall immediately bury the carcass thereof to such a depth that no part of the carcass shall be nearer than three feet from the surface of the ground. Any animal found dead shall be presumed to have died from and on account of disease. [1949 c 100 § 2; Rem. Supp. 1949 § 3142-2.]

16.68.030 Sale, gift, or conveyance prohibited—Exceptions. It is unlawful for any person to sell, offer for sale or give away a dead animal or convey the same along any public road or land not his own: *Provided*, That dead animals may be sold or given away to and legally transported on highways by a person having an unrevoked, annual license to operate a rendering plant or by a person having an unrevoked, annual license to operate as an independent collector. [1949 c 100 § 3; Rem. Supp. 1949 § 3142-3.]

16.68.040 License required of rendering plants and independent collectors. It is unlawful for any person to operate a rendering plant or act as an independent collector without first obtaining a license from the director. [1949 c 100 § 4; Rem. Supp. 1949 § 3142-4.]

16.68.050 Rendering plant license fee. Any person engaged in operating a rendering plant shall secure from the director an annual rendering plant license and pay an annual fee of one hundred dollars: *Provided*, That no license shall be required to operate a rendering plant on the premises of a licensed slaughtering establishment maintaining state or federal meat inspection unless said rendering plant receives dead animals that have been transported on public highways. [1949 c 100 § 5; Rem. Supp. 1949 § 3142-5.]

16.68.060 Independent collector license fee. Any person engaged in the business of independent collector shall secure from the director an annual independent collector license and pay an annual fee of fifty dollars. [1949 c 100 § 6; Rem. Supp. 1949 § 3142-6.]

16.68.070 Substation or places of transfer license fee. Any rendering plant operator or independent collector that operates substations or places of transfer shall secure from the director an annual substation license or place of transfer license and pay an annual fee of twenty-five dollars for each substation or place of transfer. [1949 c 100 § 7; Rem. Supp. 1949 § 3142-7.]

16.68.080 Expiration of license—Revocation. Any license or permit issued under this chapter shall expire on the thirtieth day of June next subsequent to the date of issue, and may be sooner revoked by the director or his authorized representative for violations of this chapter. Any licensee or permittee under this chapter shall have the right to demand a hearing before the director before a revocation is made permanent. [1949 c 100 § 8; Rem. Supp. 1949 § 3142-8.]

16.68.090 Applications for license. Any person applying for a license to operate a rendering plant and/or substation and/or place of transfer, or to act as an independent collector shall make application on forms furnished by the director. Said application shall give all information required by the director and shall be accompanied by the required license fee. [1949 c 100 § 9; Rem. Supp. 1949 § 3142-9.]

16.68.100 Procedure upon application—Inspection of premises. If the director finds that the locations, buildings, substations equipment, vehicles, places of transfer, or proposed method of operation do not fully comply with the requirements of this chapter, he shall notify the applicant by registered letter wherein the same fails to comply. If the applicant whose plant or operation failed to comply notifies the director within ten days from the receipt of the registered letter that he will discontinue operations, the fee accompanying the application will be returned to him; otherwise no part of the fee will be refunded. If the applicant whose plant failed to comply within a reasonable time, to be fixed by the director or his authorized representative, notifies the director that such defects are remedied, a second inspection shall be made. Not more than two inspections may

be made on one application. [1949 c 100 § 10; Rem. Supp. 1949 § 3142-10.]

16.68.110 Duty of licensees as to premises. Every licensee under this chapter must comply with the following:

(1) All floors shall be constructed of concrete or other impervious material, shall be kept reasonably clean and in good repair. Floors shall slope at least one-fourth inch to the foot toward drains, and slope at least three-eighths inch to the foot as the drains are approached.

(2) Adequate sanitary drainage must be provided leading to approved grease traps and approved sewage disposal system. No point on the floor shall be over sixteen feet from a drain.

(3) Suitable disposal of paunch contents must be provided in accordance with sanitary regulations.

(4) Walls shall be of impervious material to a height not less than six feet from the floor with a tight union with the floor.

(5) Potable water supply shall be provided for human consumption, washing and cleaning.

(6) Ample steam shall be provided for cleaning purposes.

(7) Approved toilet and dressing room facilities must be provided for employees.

(8) The building must be kept free from flies, rats, mice, and cockroaches.

(9) Premises must be kept neat and orderly and all buildings must be attractive in appearance.

(10) All rendering plants, substations, and places of transfer shall be so located, arranged, constructed and maintained, and the operation so conducted at all times as to be consistent with public health and safety.

(11) Suitable facilities for the dipping, washing and disinfecting of hides obtained from animals that died or were killed on account of an infectious or contagious disease, shall be provided.

(12) Two copies of building or remodeling plans shall be forwarded to the director for his approval before such building or remodeling is begun. [1949 c 100 § 12; Rem. Supp. 1949 § 3142-12.]

16.68.120 Duty of licensees—Standards. Every licensee under this chapter shall comply with the following:

(1) Dead animals shall be placed in containers or vehicles which are constructed of or lined with impervious material, and which do not permit the escape of any liquid, and which are covered in such a way that the contents shall not be openly exposed to insects.

(2) All vehicles and containers used for transporting dead animals shall be properly cleaned and disinfected before leaving the premises of a rendering plant, substation or place of transfer.

(3) After original loading, dead animals shall not be moved from the transporting container or vehicle upon a public highway or in any other place, except at a licensed rendering plant, licensed substation, or licensed place of transfer.

(4) No containers and vehicles used for transporting dead animals shall be used for the transporting of live animals except to a licensed rendering plant.

(5) All vehicles used to haul dead animals that have died of an infectious or contagious disease, shall proceed directly to the unloading point and shall not enter other premises until the vehicle has been properly cleaned and disinfected.

(6) The name of the rendering plant or independent collector shall be painted in letters at least four inches high on each side of every truck used for transporting dead animals.

(7) The skinning and dismembering of dead animals shall be done in the building where they are processed.

(8) Cooking vats or tanks shall be airtight except for proper escape for steam or vapor.

(9) Steam or vapor from cooking vats or tanks shall be so disposed of as not to be detrimental to public health or safety.

(10) Dead animals shall be processed within forty-eight hours after delivery to the rendering plant.

(11) No carcasses, parts thereof, or packing house refuse under process for marketing shall be permitted to come in contact with any part of the building or the equipment used in connection with the unloading, skinning, dismembering and grinding of carcasses or refuse as originally received at disposal plant. [1949 c 100 § 13; Rem. Supp. 1949 § 3142-13.]

16.68.130 Right of access to premises and records. The director or his authorized agent, shall have free and uninterrupted access to all parts of premises that come under the provisions of this chapter, for the purpose of making inspections and the examination of records. [1949 c 100 § 14; Rem. Supp. 1949 § 3142-14.]

16.68.140 Unlawful possession of horse meat—Exceptions. It shall be unlawful for any person to transport, to sell, offer to sell, or have on his premises horse meat for other than human consumption unless said horse meat is decharacterized in a manner prescribed by the director: *Provided*, That this provision shall not apply to carcasses slaughtered by a farmer for consumption on his own ranch or to carcasses in the possession of a person licensed under this chapter, or to canned horse meat meeting United States bureau of animal industry regulations. [1949 c 100 § 15; Rem. Supp. 1949 § 3142-18.]

16.68.150 Feeding of carcasses to swine unlawful—Exception. It shall be unlawful to feed carcasses of animals, or any part or portion thereof, to swine, unless said carcasses or portions thereof are cooked in a manner prescribed by the director. [1949 c 100 § 16; Rem. Supp. 1949 § 3142-20.]

Swine, garbage feeding: RCW 16.36.103 through 16.36.110.

16.68.160 Disposition of fees. Funds collected for license fees and inspection fees shall be retained by the director to be used for the enforcement of this chapter. [1949 c 100 § 11; Rem. Supp. 1949 § 3142-11.]

16.68.170 Rules and regulations. The director is authorized and shall make and enforce such regulations as may be necessary to effectuate the provisions of this chapter. Such regulations shall be consistent with the provisions of this chapter. [1949 c 100 § 17; Rem. Supp. 1949 § 3142-21.]

16.68.180 Penalty for violations. The violation of any provision of this chapter shall be a misdemeanor. [1949 c 100 § 18; Rem. Supp. 1949 § 3142-22.]

16.68.190 Exception as to use for bait for trapping purposes. Nothing in this chapter shall prohibit the state *game department from using the carcasses of dead animals for trap bait in their regular trapping operations. [1949 c 100 § 18A; Rem. Supp. 1949 § 3142-23.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

Chapter 16.70

CONTROL OF PET ANIMALS INFECTED WITH DISEASES COMMUNICABLE TO HUMANS

Sections

16.70.010	Purpose.
16.70.020	Definitions.
16.70.030	Emergency action authorized—Scope—Animals as public nuisance.
16.70.040	Rules and regulations—Scope.
16.70.050	Violations—Penalty.
16.70.060	Concurrent powers—Cooperation between officials.

16.70.010 Purpose. The incidence of disease communicated to human beings by contact with pet animals has shown an increase in the past few years. The danger to human beings from such pets infected with disease communicable to humans has demonstrated the necessity for legislation to authorize the secretary of the department of social and health services and the state board of health to take such action as is necessary to control the sale, importation, movement, transfer, or possession of such animals where it becomes necessary in order to protect the public health and welfare. [1971 c 72 § 1.]

16.70.020 Definitions. The following words or phrases as used in this chapter shall have the following meanings unless the context indicates otherwise:

(1) "Pet animals" means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet.

(2) "Secretary" means the secretary of the department of social and health services or his designee.

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

(4) "Board" means the Washington state board of health.

(5) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

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(6) "Quarantine" means the placing and restraining of any pet animal or animals by direction of the secretary, either within a certain described and designated enclosure or area within this state, or the restraining of any such pet animal or animals from entering this state. [1971 c 72 § 2.]

16.70.030 Emergency action authorized—Scope—Animals as public nuisance. In the event of an emergency arising out of an outbreak of communicable disease caused by exposure to or contact with pet animals, the secretary is hereby authorized to take any reasonable action deemed necessary by him to protect the public health, including but not limited to the use of quarantine or the institution of any legal action authorized pursuant to Title 7 RCW and RCW 43.20A.640 through 43.20A.650.

The secretary shall have authority to destroy any pet animal or animals which may reasonably be suspected of having a communicable disease dangerous to humans and such animal or animals are hereby declared to be a public nuisance. [1971 c 72 § 3.]

Reviser's note: "RCW 43.20.150 through 43.20.170" has been translated to "RCW 43.20A.640 through 43.20A.650" because of their recodification from chapter 43.20 RCW to chapter 43.20A RCW by 1979 c 141 § 384.

16.70.040 Rules and regulations—Scope. The secretary, with the advice and concurrence of the director of the department of agriculture, shall be authorized to develop rules and regulations for proposed adoption by the board relating to the importation, movement, sale, transfer, or possession of pet animals as defined herein which are reasonably necessary for the protection and welfare of the people of this state. [1971 c 72 § 4.]

16.70.050 Violations—Penalty. Any person violating or refusing or neglecting to obey the order or directive issued by the secretary pursuant to the authority granted under this action [act] or the rules and regulations promulgated by the board hereunder shall be guilty of a misdemeanor. [1971 c 72 § 5.]

16.70.060 Concurrent powers—Cooperation between officials. The powers conferred on the secretary by this chapter shall be concurrent with the powers conferred on the director of the department of agriculture by chapter 16.36 RCW, and chapter 43.23 RCW, and the secretary and director shall cooperate in exercising their responsibilities in these areas. [1971 c 72 § 6.]

Chapter 16.72

FUR FARMING

Sections

16.72.010	Definitions.
16.72.020	Quarantine controls.
16.72.030	Fox, mink, marten declared personality.
16.72.040	Branding—Recording.

16.72.010 Definitions. As used in this chapter:

"Director" means director of agriculture.

"Department" means department of agriculture.

"Person" includes any individual, firm corporation, trust, association, copartnership, society, or other organization of individuals and any other business unit, device or arrangement.

"Fur farming" means breeding, raising and rearing of mink, marten, fox and chinchilla in captivity or enclosures. [1955 c 321 § 2.]

16.72.020 Quarantine controls. Fur farming shall be deemed an agricultural pursuit and the director is hereby authorized to exercise quarantine controls over such farms in accordance with the provisions of this title. Facilities available to the department may be used by the director in carrying out the provisions of this chapter. [1955 c 321 § 3.]

16.72.030 Fox, mink, marten declared personalty. All fox, mink and marten that have been lawfully imported or acquired, or bred or reared in captivity or enclosures, are declared to be personal property. Any person hereafter acquiring any such fur bearing animals in the wild state, shall within ten days furnish satisfactory proof to the director that such animals were lawfully obtained. Such wild animals shall not become personal property under the provisions of this section until such proof is furnished. [1955 c 321 § 4.]

16.72.040 Branding—Recording. The owners of any fox, mink, or marten may mark them by branding with tattoo or other marks for the purpose of identification, but no person shall be entitled to ownership in or rights under any particular branding marks unless and until the branding marks are recorded with the department in the same manner and with like effect as brands of other animals are recorded as provided in *chapter 16.56 RCW. [1955 c 321 § 5.]

*Reviser's note: Chapter 16.56 RCW was repealed by 1959 c 54 § 39. For later enactment, see chapter 16.57 RCW.

Chapter 16.74

WASHINGTON WHOLESOME POULTRY PRODUCTS ACT

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16.74.010 Short title. This chapter shall be known and designated as the "Washington wholesome poultry products act". [1969 ex.s. c 146 § 1.]

16.74.020 Purposes of chapter. The purposes of this chapter are to adopt new legislation governing poultry and poultry products and to promote uniformity of state legislation with the federal poultry products inspection act. Poultry and poultry products are an important source of the state's total supply of food. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that poultry and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Poultry and poultry products not reaching these standards are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry and poultry products, and result in sundry losses to poultry producers and processors of poultry and poultry products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and poultry which are regulated under this chapter substantially affect the public and that regulation by the director as contemplated by this chapter is appropriate to protect the health and welfare of consumers. [1969 ex.s. c 146 § 2.]

16.74.030 Definitions govern construction. The definitions in RCW 16.74.040 through 16.74.280, unless the context otherwise requires, shall govern the construction of this chapter. [1969 ex.s. c 146 § 3.]

16.74.040 "Department". "Department" means the department of agriculture of the state of Washington. [1969 ex.s. c 146 § 4.]

16.74.050 "Director". "Director" means the director of the department of agriculture or his authorized representative. [1969 ex.s. c 146 § 5.]

16.74.060 "Person". "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. [1969 ex.s. c 146 § 6.]

16.74.070 "Poultry". "Poultry" includes but is not limited to chickens, turkeys, ducks, geese, or any other bird used for human consumption whether live or slaughtered. [1969 ex.s. c 146 § 7.]

16.74.080 "Poultry products". "Poultry products" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass, or part thereof, excepting poultry products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry and which are exempted by the director from definition as a poultry product under such conditions as the director may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products. [1969 ex.s. c 146 § 8.]

16.74.090 "Adulterated". "Adulterated" shall apply to any poultry product under one or more of the following circumstances:

(1) 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;

(2) If it bears or contains (by reason of administration of any substance to the live poultry or otherwise) and is an added poisonous or added deleterious substance (other than one which is (a) a pesticide chemical in or on a raw agricultural commodity; (b) a food additive; or (c) a color additive) which may, in the judgment of the director make such article unfit for human food;

(3) 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 it is now or hereafter amended;

(4) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394 as it is now or hereafter amended;

(5) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396 as it is now or hereafter amended: *Provided*, That an article which is not otherwise deemed adulterated under subsections (2), (3), or (4) 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 establishments;

(6) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(7) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(8) If it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter;

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(10) 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

(11) 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. [1969 ex.s. c 146 § 9.]

16.74.100 "Misbranded". "Misbranded" shall apply to any poultry product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in a package or other container unless it bears a label showing (a) the name and the place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count: *Provided*, That under part (b) of this subsection (5), reasonable variations may be permitted, and exemptions as to small packages or articles not in packages or other containers may be established by regulations prescribed by the director;

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the director under RCW 16.74.350 unless (a) it conforms to such definition and standard, and (b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the director under RCW 16.74.350, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of subsection (7) of this section, unless its label bears (a) the common

or usual name of the food, if there be any, and (b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the director, be designated as spices, flavorings, and colorings without naming each: *Provided*, That to the extent that compliance with the requirements of part (b) of this subsection (9) is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director;

(10) If it purports to be or is represented for special dietary uses unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the director determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That, to the extent that compliance with the requirements of this subsection (11) is impracticable, exemptions shall be established by regulations promulgated by the director; or

(12) If it fails to bear on its containers, and in the case of nonconsumer packaged carcasses directly thereon, as the director may by regulations prescribe, the official inspection legend and official establishment number of the establishment where the article was processed, and, unrestricted by any of the foregoing, such other information as the director may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. [1969 ex.s. c 146 § 10.]

16.74.110 "Inspector". "Inspector" means an employee or official of the department authorized by the director to inspect poultry and poultry products under the authority of this chapter. [1969 ex.s. c 146 § 11.]

16.74.120 "Official mark". "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article or poultry under this chapter. [1969 ex.s. c 146 § 12.]

16.74.130 "Official inspection legend". "Official inspection legend" means any symbol prescribed by regulations of the director showing that an article was inspected and passed in accordance with this chapter. [1969 ex.s. c 146 § 13.]

16.74.140 "Official certificate". "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. [1969 ex.s. c 146 § 14.]

16.74.150 "Official device". "Official device" means any device prescribed or authorized by the director for use in applying any official mark. [1969 ex.s. c 146 § 15.]

16.74.160 "Official establishment". "Official establishment" means any establishment licensed by the department at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this chapter. [1969 ex.s. c 146 § 16.]

16.74.170 "Inspection service". "Inspection service" means the animal industry division of the department having the responsibility for carrying out the provisions of this chapter. [1969 ex.s. c 146 § 17.]

16.74.180 "Container", "package". "Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover. [1969 ex.s. c 146 § 18.]

16.74.190 "Label", "labeling". "Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article; and the term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1969 ex.s. c 146 § 19.]

16.74.200 "Shipping container". "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container. [1969 ex.s. c 146 § 20.]

16.74.210 "Immediate container". "Immediate container" means any consumer package, or any other container in which poultry products, not consumer packaged, are packed. [1969 ex.s. c 146 § 21.]

16.74.220 "Capable of use as human food". "Capable of use as human food" means any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the director to deter its use as human food, or it is naturally inedible by humans. [1969 ex.s. c 146 § 22.]

16.74.230 "Processed". "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed. [1969 ex.s. c 146 § 23.]

16.74.240 "Uniform Washington food, drug and cosmetic act". "Uniform Washington food, drug and cosmetic act" means the act so entitled, as now or hereafter amended. [1969 ex.s. c 146 § 24.]

Uniform Washington food, drug, and cosmetic act: Chapter 69.04 RCW.

16.74.250 "Pesticide chemical", "food additive", "color additive", "raw agricultural commodity". "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the uniform Washington food, drug and cosmetic act as now or hereafter amended. [1969 ex.s. c 146 § 25.]

16.74.260 "Poultry products broker". "Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person. [1969 ex.s. c 146 § 26.]

16.74.270 "Renderer". "Renderer" means any person engaged in the business of rendering carcasses, or parts or products of the carcasses, of poultry, except rendering conducted under inspection or exemption under this chapter. [1969 ex.s. c 146 § 27.]

16.74.280 "Animal food manufacturer". "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry. [1969 ex.s. c 146 § 28.]

16.74.290 "Intrastate commerce". "Intrastate commerce" means any article in intrastate commerce whether such article is alive or processed and is 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 to consumers in this state whether at wholesale or retail. [1969 ex.s. c 146 § 64.]

16.74.300 Preslaughter inspection. In order to protect the public health by preventing the processing and distribution of unwholesome or adulterated poultry products in this state, the director shall when he deems it necessary cause to be made by inspectors preslaughter inspection of poultry in each official establishment processing poultry or poultry products. [1969 ex.s. c 146 § 29.]

16.74.310 Post mortem inspection. The director, whenever processing operations are being conducted, shall cause to be made by inspectors post mortem inspection of the carcass of each bird processed, and at any time such quarantine, segregation and reinspection as he deems necessary of poultry and poultry products capable of use as a human food in each official establishment processing such poultry or poultry products. [1969 ex.s. c 146 § 30.]

16.74.320 Condemnation of adulterated carcasses and products—Appeal. All poultry carcasses and parts thereof and other poultry products found to be adulterated shall be condemned and shall if no appeal be taken from such determination of condemnation be destroyed for human food purposes under the supervision of an inspector: *Provided*, That carcasses, parts and products which by processing may be made not adulterated, need not be so condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the carcasses, parts, or products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal cost

shall be at the cost of the appellant if the director determines the appeal is frivolous. If the determination of the condemnation is sustained the carcasses, parts and products shall be destroyed for human food purposes under the supervision of an inspector. [1969 ex.s. c 146 § 31.]

16.74.330 Sanitary practices. Each official establishment slaughtering poultry or processing poultry products subject to the provisions of this chapter shall have such premises, facilities and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the director for the purpose of preventing the processing, distribution or sale of poultry products which are adulterated. [1969 ex.s. c 146 § 32.]

16.74.340 Information to be on containers after inspection. All poultry products inspected at any official establishment under the authority of this chapter and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, on their shipping containers and immediate containers, and in the case of nonconsumer packaged carcasses directly thereon, as the director may require, the information required under RCW 16.74.100. [1969 ex.s. c 146 § 33.]

16.74.350 Director may prescribe labeling, standards of identity and standards of fill requirements. The director whenever he determines such action is necessary for the protection of the public, may prescribe: (1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling in marketing and labeling any articles or poultry subject to this chapter; (2) definitions and standards of identity or composition of articles subject to this chapter and standards of fill of container for such articles not inconsistent with any such standards established under the uniform Washington food, drug and cosmetic act. [1969 ex.s. c 146 § 34.]

16.74.360 False, misleading markings prohibited. No article subject to this chapter shall be sold or offered for sale by any person in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers, which are not false or misleading and which are approved by the director, are permitted. [1969 ex.s. c 146 § 35.]

16.74.370 Director may withhold use of marking or labeling—Hearing—Appeal. If the director has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this chapter is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the marking, labeling, or container does not accept the determination of the director, such person

may request a hearing, as provided for contested cases under chapter 34.04 RCW, as now or hereafter amended, but the use of the marking, labeling, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business or to the superior court for Thurston county. [1969 ex.s. c 146 § 36.]

16.74.380 Prohibited practices. No person shall:

(1) Slaughter any poultry or process any poultry products which are capable of use as human food at any establishment processing any such articles for intrastate commerce, except in compliance with the requirements of this chapter;

(2) Sell, knowingly transport, offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in this state (a) any poultry products which are capable of use as human food and which are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (b) any poultry products required to be inspected under this chapter unless they have been so inspected and passed;

(3) Do, with respect to any poultry products which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such products to be adulterated or misbranded;

(4) Sell, knowingly transport, offer for sale or transportation, knowingly receive for transportation, in this state or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head or viscera have not been removed in accordance with regulations promulgated by the director, except as may be authorized by regulations of the director.

(5) Use to his own advantage, or reveal other than to the authorized representatives of this state, United States government or any other state in their official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of this chapter concerning any matter which is entitled to protection as a trade secret. [1969 ex.s. c 146 § 37.]

16.74.390 Reproducing official mark or certificate prohibited. No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director. [1969 ex.s. c 146 § 38.]

16.74.400 Unlawful acts as to official mark, device or certificate. No person shall:

(1) Forge any official device, mark, or certificate;

(2) Without authorization from the director use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) Possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) Make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director; or

(6) Represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted. [1969 ex.s. c 146 § 39.]

16.74.410 Facilities, inventory, records to be open to inspection and sampling. The following classes of persons shall, for such period of time as the director may by regulations prescribe, not to exceed two years unless otherwise directed by the director for good cause shown, keep such records as are properly necessary for the effective enforcement of this chapter in order to insure against adulterated or misbranded poultry products for the Washington consumer; and all persons subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the director, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any person who engages in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any poultry, for intrastate commerce, for use as human food or animal food;

(2) Any person who engages in the business of buying or selling (as poultry products brokers, wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for intrastate commerce, or importing, any carcasses, or parts or products of carcasses, of any poultry;

(3) Any person who engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, or importing, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter. [1969 ex.s. c 146 § 41.]

16.74.420 Registration of poultry products brokers, renderers, animal food manufacturers, wholesalers and warehousemen. No person shall engage in business or intrastate commerce, as a poultry products broker, renderer or animal food manufacturer, or engage in business

in intrastate commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any poultry, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for intrastate commerce, or engage in the business of buying, selling, or transporting in intrastate commerce, or importing, any dead, dying, disabled, or diseased poultry, or parts of the carcasses of any poultry that died otherwise than by slaughter, unless, when required by regulations of the director, he has registered with the director his name, and the address of each place of business at which, and all trade names under which, he conducts such business. [1969 ex.s. c 146 § 42.]

16.74.430 Poultry products not for use as human food—Restrictions—Identification. Inspection shall not be provided under this chapter at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in this state, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, knowingly transport, or offer for sale or knowingly offer for transportation, or knowingly receive for transportation, in this state, or import, any poultry carcasses or parts or products thereof which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the director or are naturally inedible by humans. [1969 ex.s. c 146 § 40.]

16.74.440 Poultry products not for use as human food—Transactions, transportation and importation regulations. No person engaged in the business of buying, selling, or transporting in intrastate commerce, or importing, dead, dying, disabled, or diseased poultry, or any parts of the carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, or import, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter, unless such transaction, transportation or importation is made in accordance with such regulations as the director may prescribe to assure that such poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food. [1969 ex.s. c 146 § 43.]

16.74.450 Regulations for storage and handling of poultry products—Penalty for violation. (1) The director may by regulations prescribe conditions under which poultry products capable of use as human food, shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting, in or for commerce, or importing, such articles, whenever the director deems such action necessary to assure that such articles will not be adulterated

or misbranded when delivered to the consumer. Violation of any such regulation is an infraction punishable under RCW 16.74.650.

(2) Before any criminal proceedings are filed against a person for a violation of this chapter, such person shall be given reasonable notice of the alleged violation and an opportunity to present his views orally or in writing in regard to such contemplated action. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violators of this chapter, whenever he believes that the public interest will be adequately served and compliance with the chapter obtained by a suitable written notice. [1969 ex.s. c 146 § 44.]

16.74.460 Designation of time for inspection of slaughter and processing of poultry. Whenever the director shall deem it necessary in order to furnish proper, efficient and economical inspection of two or more establishments and the proper inspection of poultry or poultry products, the director, after a hearing on written notice to the licensee of each such establishment affected, may designate days and hours for the slaughter of poultry and the preparation or processing of poultry products at such establishments. The director in making such designation of days and hours shall give consideration to the existing practices at the affected establishment fixing the time for slaughter of poultry and the preparation or processing of poultry products thereof. [1969 ex.s. c 146 § 45.]

16.74.470 Disposition of adulterated or misbranded poultry or poultry products away from preparing establishment—Public nuisance. The director, whenever he finds any poultry or poultry products subject to the provisions of this chapter away from the establishment where such poultry or poultry products were prepared or anywhere in intrastate commerce that are adulterated or misbranded, shall render such poultry or poultry products unsalable or shall order the destruction of such poultry or poultry products which are hereby declared to be a public nuisance. [1969 ex.s. c 146 § 46.]

16.74.480 Embargo on adulterated or misbranded poultry or products—When. The director may, when he finds, or has probable cause to believe that any poultry or poultry product subject to the provisions of this chapter which has been or may be introduced into intrastate commerce and such poultry or poultry products are so adulterated or misbranded that their embargo is necessary to protect the public from injury, affix on such poultry or poultry products a notice of their embargo prohibiting their sale or movement in intrastate commerce without a release from the director. The director shall subsequent to embargo, if he finds that such poultry or poultry products are not adulterated or misbranded so as to be in violation of this chapter, remove such embargo forthwith. [1969 ex.s. c 146 § 47.]

16.74.490 Embargo on adulterated or misbranded poultry or products—Petition to superior court—

Hearing—Order—Costs. When the director has embargoed any poultry or poultry products, he shall petition the superior court of the county in which the poultry or poultry product is located without delay and within twenty days for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and, after a prompt hearing to any claimant of poultry or poultry products, shall issue an order which directs the removal of such embargo or the destruction or the correction and release of such poultry or poultry products. An order for destruction or correction and release shall contain such provisions for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond, as the court finds indicated in the circumstance. [1969 ex.s. c 146 § 48.]

16.74.500 Embargo on adulterated or misbranded poultry or products—Owner may agree to disposition of products without petition to court. The director need not petition the superior court as provided for in RCW 16.74.490, if the owner or the claimant of such poultry or poultry products agrees in writing to the disposition of such poultry or poultry products as the director may order. [1969 ex.s. c 146 § 49.]

16.74.510 Embargo on adulterated or misbranded poultry or products—Consolidation of petitions. Two or more petitions under RCW 16.74.490, which pend at the same time and which present the same issue and claimant hereunder, may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1969 ex.s. c 146 § 50.]

16.74.520 Embargo on adulterated or misbranded poultry or products—Claimant entitled to representative sample. The claimant in any proceeding by petition under RCW 16.74.490 shall be entitled to receive a representative sample of the article subject to such proceedings, upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1969 ex.s. c 146 § 51.]

16.74.530 Embargo on adulterated or misbranded poultry or products—Damages from administrative action. No state court shall allow the recovery of damages from administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1969 ex.s. c 146 § 52.]

16.74.540 Annual license—Fee—Contents of application. It shall be unlawful for any person to operate a poultry slaughtering or processing establishment without first having obtained an annual license from the department, which shall expire on the 31st day of March following issuance. A separate license shall be required for each such establishment. Application for a license

shall be on a form prescribed by the director and accompanied by a twenty-five dollar annual license fee. Such application shall include the full name of the applicant for the license and the location of the poultry slaughtering or processing establishment he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall 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. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. [1969 ex.s. c 146 § 53.]

16.74.550 Penalty for late renewal. If the application for renewal of any license provided for under this chapter is not filed prior to April 1st in any year, an additional fee of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he has not operated a poultry slaughtering or processing establishment subsequent to the expiration of his license. [1969 ex.s. c 146 § 54.]

16.74.560 Denial, suspension, revocation of license—Grounds. The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter. [1969 ex.s. c 146 § 55.]

16.74.570 Exemptions. (1) The director shall, by regulation and under such conditions as to sanitary standards, practices, and procedures as he may prescribe, exempt from specific provisions of this chapter—

(a) retail dealers with respect to poultry products sold directly to consumers in individual retail stores, if the only processing operation performed by such retail

dealers is the cutting up and/or packaging of poultry products on the premises where such sales to consumers are made;

(b) for such period of time as the director determines that it would be impracticable to provide inspection and the exemption will aid in the effective administration of this chapter, any person engaged in the processing of poultry or poultry products for intrastate commerce and the poultry or poultry products processed by such person: *Provided*, That no such exemption shall continue in effect on and after February 18, 1970; and

(c) persons slaughtering, processing, or otherwise handling poultry or poultry products which have been or are to be processed as required by recognized religious dietary laws, to the extent that the director determines necessary to avoid conflict with such requirements while still effectuating the purposes of this chapter.

(2) (a) The director shall, by regulation and under such conditions, including sanitary standards, practices, and procedures, as he may prescribe, exempt from specific provisions of this chapter—

(i) the slaughtering by any person of poultry of his own raising, and the processing by him and transportation of the poultry products exclusively for use by him and members of his household and his nonpaying guests and employees; and

(ii) the custom slaughter by any person of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation of the poultry products exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees: *Provided*, That the director may promulgate such rules and regulations as are necessary to prevent the commingling of inspected and uninspected poultry and poultry products.

(b) In addition to the specific exemptions provided herein, the director shall, when he determines that the protection of consumers from adulterated or misbranded poultry products will not be impaired by such action, provide by regulation, consistent with paragraph (c), for the exemption of the operations of poultry producers not exempted under paragraph (a), which are engaged in slaughtering and/or cutting up poultry for distribution as carcasses or parts thereof, from such provisions of this chapter as he deems appropriate, while still protecting the public from adulterated or misbranded products, under such conditions, including sanitary requirements, as he shall prescribe to effectuate the purposes of this chapter.

(c) The provisions of this chapter shall not apply to poultry producers with respect to poultry of their own raising on their own farms if—

(i) such producers slaughter not more than two hundred fifty turkeys, or not more than an equivalent number of birds of all species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey);

(ii) such poultry producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms.

(3) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to articles which are exempted from inspection under this section, except as otherwise specified under subsections (1) and (2).

(4) The director may by order suspend or terminate any exemption under this section with respect to any person whenever he finds that such action will aid in effectuating the purposes of this chapter. [1969 ex.s. c 146 § 65.]

16.74.580 Exceptions to exemption provisions—Licensing and inspection by city or county, when. The exemptions set forth in RCW 16.74.570 shall not include an exemption from the licensing provisions set forth in RCW 16.74.540 for persons slaughtering or processing poultry except as to retail dealers conforming to the provisions of RCW 16.74.570(1)(a) and producers conforming to the provisions of RCW 16.74.570(2)(c): *Provided*, That any city or county may, when its inspection service is equivalent to that required under the provisions of this chapter as determined by the director and the comparable federal agency administering the federal poultry inspection act, license and inspect any retail dealer's place of business subject to the provisions of this chapter when such retail dealer's place of business is situated within the jurisdiction of such city or county and such retail dealer sells at least fifty percent of the poultry and poultry products at each such place of business to the ultimate consumer. [1969 ex.s. c 146 § 66.]

16.74.590 Rules, regulations and hearings subject to administrative procedure act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.04 RCW, the Administrative Procedure Act, as now or hereafter amended. [1969 ex.s. c 146 § 56.]

16.74.600 Intergovernmental cooperation. The director may in order to carry out the purpose of this chapter enter into agreements with any federal, state or other governmental unit for joint inspection programs or for the receipt of moneys from such federal, state or other governmental units in carrying out the purpose of this chapter. [1969 ex.s. c 146 § 57.]

16.74.610 Regulations promulgated under federal poultry products inspection act adopted—Exception. The regulations which have been promulgated under the provisions of the federal poultry products inspection act, 21 USC 451 et seq., and in effect on August 9, 1971, and not in conflict with the provisions of this chapter are adopted as regulations applicable under the provisions of this chapter. [1971 ex.s. c 108 § 4; 1969 ex.s. c 146 § 58.]

16.74.615 Uniformity of state and federal acts and regulations as purpose—Procedure. The purpose of this chapter is to promote uniformity of state legislation

and regulations with the federal poultry products inspection act, 21 USC 451 et seq., and regulations adopted thereunder. In accord with such purpose any regulation adopted under the federal poultry products inspection act and published in the federal register shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.04 RCW as enacted or hereafter amended. The director shall, however, within thirty days of the publication of the adoption of any such regulation under the federal poultry products inspection act give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.04 RCW as enacted or hereafter amended. [1971 ex.s. c 108 § 5.]

16.74.620 Disposition of moneys. All moneys received by the department under the provisions of this chapter shall be paid into the state treasury. [1969 ex.s. c 146 § 59.]

16.74.630 Prior liability preserved. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on August 11, 1969. [1969 ex.s. c 146 § 60.]

16.74.640 Authority of city or county to license and inspect poultry products distributors' and retailers' facilities. This chapter shall in no manner be construed to deny or limit the authority of a city or county to license and carry on the necessary inspection of poultry or poultry products, distribution facilities and equipment of retail poultry and poultry product distributors selling, offering for sale, holding for sale, or trading, delivering or bartering poultry or poultry products within their jurisdiction and/or prohibit the sale of poultry or poultry products within their jurisdiction when such poultry or poultry products are adulterated or distributed under unsanitary conditions. [1969 ex.s. c 146 § 67.]

16.74.650 Penalty. Any person violating any provisions of this chapter or any rules or regulations adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1969 ex.s. c 146 § 61.]

16.74.900 Portions of chapter conflicting with federal requirements—Construction. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the department, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the department, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the department. [1969 ex.s. c 146 § 68.]

16.74.910 Severability—1969 ex.s. c 146. If any provision of this chapter, or its application to any person or circumstances is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 146 § 63.]

16.74.920 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and non-exclusive and shall not affect any other remedy. [1969 ex.s. c 146 § 62.]

Title 17

WEEDS, RODENTS AND PESTS

Chapters

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- 17.10 Noxious weeds—Control boards.
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Chapter 17.04 WEED DISTRICTS

Sections

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17.04.010 Districts authorized—Area and boundaries. The boards of county commissioners of the respective counties may create a weed district or districts within their counties and enlarge any district, or reduce any district or create or combine or consolidate the districts, or divide or create new districts, from time to time, in the manner hereinafter provided, for the purpose of destroying, preventing and exterminating, or to prevent the introduction, propagation, cultivation or increase of, any particular weed, weeds or plants, or all weeds or plants, including Scotch broom, which are now or may hereafter be classed by the agricultural experiment station of Washington State University as noxious weeds, or plants detrimental to or destructive of crops, fruit, trees, shrubs, valuable plants, forage, or other agricultural plants or produce. Any such district shall include not less than one section of land, and the boundaries thereof shall be along an established road, railroad, scab, uncleared or grazing land, or property line, or established lines, or some natural boundary, and shall include only cultivated or farming lands and shall not include any scab, uncleared or grazing land, except such as shall lie wholly within cultivated or farming lands within the districts, or which lie adjacent to such cultivated or farming lands and which are infested, or which may reasonably be expected to become infested, with the particular weed or weeds to be destroyed, prevented and exterminated by such district: *Provided*, That any quarter section of land, or lesser legal subdivision in single ownership, fifty percent of which is cultivated or farming land, shall be considered cultivated and farming land within the meaning of this chapter. [1961 c 250 § 1; 1937 c 193 § 1; 1929 c 125 § 1; RRS § 2771. Prior: 1921 c 150 § 1. Formerly RCW 17.04.010 and 17.04.020.]

17.04.030 Petition—Time, place and notice of hearing. Any one or more freeholders owning more than fifty percent of the acreage desired to be included within the proposed weed district may file a petition with the board of county commissioners praying that their land be included, either separately or with other lands included in the petition, in a weed district to be formed for the purpose of destroying, preventing or exterminating any one or all such weeds, or that such lands be included within a district already formed, or a new district or districts to be formed out of any district or districts then existing. Such petition shall state the boundaries of the proposed district, the approximate number of acres in the proposed district, the particular weed or weeds to be destroyed, prevented or exterminated, the general method or means to be used in such work, and shall contain a list of all known land owners within the proposed district, together with the addresses of such land

owners. Upon the filing of such petition the board of county commissioners shall fix a time for a hearing thereon, and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district, one copy of which shall be at the main entrance to the court house, and by mailing a copy of such notice to each of the land owners named in the petition at the address therein named, and if any of the land described in the petition be owned by the state, a copy thereof shall be mailed to the state land commissioner at Olympia. [1929 c 125 § 2; RRS § 2772. Prior: 1921 c 150 § 2. Formerly RCW 17.04.030 and 17.04.040.]

17.04.050 Board to determine petition—Resolution to create district. At the time and place fixed for such hearing the board of county commissioners shall determine whether such weed district shall be created and if such board determines that such district shall be created, it shall fix the boundaries thereof, but shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented and exterminated as set forth in this petition, and shall not enlarge the boundaries of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice to all land owners interested as provided in RCW 17.04.030. If the board shall determine that the weed district petitioned for shall be created it shall pass a resolution to that effect and shall assign a number to such weed district which shall be the lowest number not already taken or adopted by a weed district in such county, and thereafter such district shall be known as "Weed District No. _____ of _____ County," inserting in the first blank the number of the district and in the second the name of the county in which the district is organized. [1929 c 125 § 3; RRS §§ 2773, 2774. Prior: 1921 c 150 §§ 3, 4. Formerly RCW 17.04.050 and 17.04.060.]

17.04.070 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms of office—Vacancies—Rules and regulations. If the board of county commissioners establish such district it shall call a special meeting to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established by such board.

Notice of such meeting shall be given by the county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the county commissioner in whose commissioner district

such district is located shall act as chairman and call the meeting to order. The chairman shall appoint two persons to assist him in conducting the election, one of whom shall act as clerk. If such county commissioner be not present the electors of such district then present shall elect a chairman of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chairman of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. _____ of _____ county (giving number of district and name of county)." If the challenged person shall take such oath or make such affirmation, he shall be entitled to vote; otherwise his vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he desires as the first directors of such district and shall fold his ballot and hand the same to the chairman of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chairman shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first Monday of March following his election.

Annually thereafter, there shall be held a meeting of the electors of such district on the last Monday in February, except that the directors may, by giving the same notice as is required for the initial meeting, fix an earlier time for the annual meeting on any nonholiday during the months of December, January or February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at

such annual meeting shall be the same as is required for the initial meeting. In conducting directors' elections, the chairman may accept nominations from the floor but voting shall not be limited to those nominated.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the county commissioners of the county in which such district is located shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chairman and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the board of county commissioners, which bond shall be filed with the county commissioners and shall be conditioned for the faithful discharge of his duties. The cost of such bond shall be paid by the district the same as other expenses of the district. At any annual meeting the method for destroying, preventing and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. The qualified electors of any weed district, at any annual meeting, may make other weeds that are not on the petition subject to control by the weed district by a two-thirds vote of the electors present: *Provided*, That said weeds have been classified by the agricultural experiment station of Washington State University as noxious and: *Provided further*, That the directors of the weed district give public notice in the manner required for initial meetings of the proposed new control of said weeds by the weed district. [1971 ex.s. c 292 § 15; 1961 c 250 § 2; 1929 c 125 § 4; RRS § 2774-1. Formerly RCW 17.04.070 through 17.04.140.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Elections: Chapter 29.85 RCW.

17.04.150 Powers—Weed inspector. The board of directors of such weed district shall have power:

(1) To adopt rules and regulations, plans, methods and means for the purpose of destroying, preventing and exterminating the weed or weeds specified in the petition, and to supervise, carry out and enforce such rules, regulations, plans, methods and means.

(2) To appoint a weed inspector and to require from him a bond in such sum as the directors may determine for the faithful discharge of his duties, and to pay the cost of such bond from the funds of such district; and to direct such weed inspector in the discharge of his duties; and to pay such weed inspector from the funds of such

district such per diem or salary for the time employed in the discharge of his duties as the directors shall determine. [1961 c 250 § 3; 1929 c 125 § 9; RRS § 2778-1. Prior: 1921 c 150 § 6.]

17.04.160 Contiguous lands. Any city or town contiguous to or surrounded by a weed district formed under this chapter shall provide for the destruction, prevention and extermination of all weeds specified in the petition which are within the boundaries of such city or town, in the same manner and to the same extent as is provided for in such surrounding or contiguous weed district; and it shall be the duty of those in charge of school grounds, playgrounds, cemeteries, parks, or any lands of a public or quasi public nature when such lands shall be contiguous to, or within any weed district, to see that all weeds specified in the petition for the creation of such district are destroyed, prevented and exterminated in accordance with the rules and requirements of such district. [1929 c 125 § 6; RRS § 2775-1.]

Destruction of weeds, etc., city ordinance: RCW 35.21.310.

17.04.170 Private lands on Indian reservation—United States lands. Any lands owned by any individual wholly or partly within the United States government Indian reservation may be included within a weed district formed under this chapter, and shall be subject to the same rules, regulations and taxes as other lands within the district; and the board of directors of any weed district are authorized to arrange with the officer or agent in charge of any United States lands, within or contiguous to any such district, for the destruction, prevention and extermination of weeds on such government lands. [1929 c 125 § 7; RRS § 2775-2.]

17.04.180 County and state lands. Whenever any lands belonging to the county are included within a weed district, the county legislative authority shall determine the amount of the taxes for which the lands would be liable if they were in private ownership, and the county legislative authority shall appropriate from the current expense fund of the county sufficient money to pay such amounts. Whenever any state lands are within any weed district, the county treasurer shall certify annually and forward to the commissioner of public lands, or, if the lands are occupied by or used in connection with any state institution, to the secretary of social and health services, or if the land is under use as state highway right of way, to the secretary of transportation, a statement showing the amount of the tax to which the lands would be liable if they were in private ownership, separately describing each lot or parcel. The commissioner of public lands or the secretary of social and health services or the secretary of transportation, as the case may be, shall cause a proper record to be made in their respective offices of the charges against the lands and shall certify the record to the state auditor thirty days before the convening of a session of the legislature in an odd-numbered year, and the state auditor shall at the next session of the legislature convened in an odd-numbered year, certify to the legislature the amount of the charges

against the lands. The legislature shall provide for payment of the charges to the weed district by an appropriation from the general fund of the state treasury or in the case of state highway right of way, the motor vehicle fund of the state treasury, with interest at six percent per annum on the amount of the charges, and without penalties. [1984 c 7 § 18; 1971 ex.s. c 119 § 1; 1961 c 250 § 4; 1929 c 125 § 8; RRS § 2777. Prior: 1921 c 150 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

17.04.190 Duties of weed inspector. It shall be the duty of the weed inspector to carry out the directions of the board of directors and to see that the rules and regulations adopted by the board are carried out. He shall personally deliver or mail to each resident landowner within such district and to any lessee or person in charge of any land within such district and residing in such district, a copy of the rules and regulations of such district; and he shall personally deliver a copy thereof to nonresident landowners or shall deposit a copy of the same in the United States post office in an envelope with postage prepaid thereon addressed to the last known address of such person as shown by the records of the county auditor; and in event no such address is available for mailing he shall post a copy of such rules and regulations in a conspicuous place upon such land. A record shall be kept by the weed inspector of such dates of mailing, posting or delivering such rules and regulations. In case of any railroad such rules and regulations shall be delivered to the section foreman, or to any official of the railroad having offices within the state. Such rules and regulations must be delivered, posted or mailed by the weed inspector as herein provided at least ten days before the time to start any annual operations necessary to comply with such rules and regulations: *Provided*, That after such district shall have been in operation two years such rules and regulations shall be delivered to resident landowners only once every three years, unless such rules and regulations are changed. [1961 c 250 § 5; 1929 c 125 § 10; RRS § 2778–2.]

17.04.200 Violation of rules and regulations—Notice to destroy weeds—Destruction. (1) If the weed inspector, or the board of directors, shall find that the rules and regulations of the weed district are not being carried out on any one or more parcels of land within such district, the weed inspector shall give forthwith a notice in writing, on a form to be prescribed by the directors, to the owners, tenants, mortgagees, and occupants, or to the accredited resident agent of any nonresident owner of such lands within the district whereon noxious weeds are standing, being or growing and in danger of going to seed, requiring him to cause the same to be cut down, otherwise destroyed or eradicated on such lands in the manner and within the time specified in the notice, such time, however, not to exceed seven days. It shall be the duty of the county auditor and county treasurer to make available to the weed inspector lists of owners, tenants, and mortgagees of lands within such district;

(2) If a resident agent of any nonresident owner of lands where noxious weeds are found standing, being or growing cannot be found, the local weed inspector shall post said notice in the form provided by the directors in three conspicuous places on said land, and in addition to posting said notice the local weed inspector shall, at the same time mail a copy thereof by registered or certified mail with return receipt requested to the owner of such nonresident lands, if his post office address is known or can be ascertained by said inspector from the last tax list in the county treasurer's office, and it shall be the duty of the treasurer to furnish such lists upon request by the weed inspector. Proof of such serving, posting and mailing of notice by the weed inspector shall be made by affidavit forthwith filed in the office of the county auditor and it shall be the duty of the county auditor to accept and file such affidavits;

(3) If the weeds are not cut down, otherwise destroyed or eradicated within the time specified in said notice, the local weed inspector shall personally, or with such help as he may require, cause the same to be cut down or otherwise destroyed in the manner specified in said notice. [1961 c 250 § 6; 1937 c 193 § 2; 1929 c 125 § 11; RRS § 2778–3. Prior: 1921 c 150 § 9, part.]

17.04.210 Statement of expense—Hearing. The weed inspector shall keep an accurate account of expenses incurred by him in carrying out the provisions of this chapter with respect to each parcel of land entered upon, and the prosecuting attorney of the county or the attorney for the weed district shall cause to be served, mailed or posted in the same manner as provided in this chapter for giving notice to destroy noxious weeds, a statement of such expenses, including description of the land, verified by oath of the weed inspector to the owner, lessee, mortgagee, occupant or agent, or person having charge of said land, and coupled with such statement shall be a notice subscribed by said prosecuting attorney or attorney for the weed district and naming a time and place when and where such matter will be brought before the board of directors of such district for hearing and determination, said statement or notice to be served, mailed or posted, as the case may be, at least ten days before the time for such hearing. [1961 c 250 § 7; 1929 c 125 § 12; RRS § 2778–4.]

17.04.220 Examination at hearing of expenses—Amount is tax on land—Effect of failure to serve notices. At the time of such hearing as provided in RCW 17.04.210, or at such time to which the same may be continued or adjourned, the board of directors shall proceed to examine expenses incurred by the weed inspector in controlling weeds on the parcel of land in question, and shall hear such testimony of such other persons who may have legal interest in the proceedings, and shall enter an order upon its minutes as to what amount, if any, is properly chargeable against the lands for weed control. Cost of serving, mailing and posting shall be added to any amount so found to be due and shall be considered part of the cost of weed control on the land in question. The amount so charged by the directors shall

be a tax on the land on which said work was done after the expiration of ten days from the date of entry of said order, unless an appeal be taken as in this chapter provided, in which event the same shall become a tax at the time the amount to be paid shall be determined by the court; and the county treasurer shall enter the same on the tax rolls against the land for the current year and collect it, together with penalty and interest, as other taxes are collected, and when so collected the same shall be paid into the fund for such weed district: *Provided*, That a failure to serve, mail or post any of the notices or statements provided for in this chapter, shall not invalidate said tax, but in case of such failure the lien of such tax shall be subordinate and inferior to the interests of any mortgagee to whom notice has not been given in accordance with the provisions of this chapter. [1961 c 250 § 8; 1929 c 125 § 13; RRS § 2778-5. Prior: 1921 c 150 § 5. FORMER PART OF SECTION: 1925 c 125 § 14 now codified in RCW 17.04.230.]

17.04.230 Appeal—Notice—Cost bond. Any interested party may appeal from the decision and order of the board of directors of such district to the superior court of the county in which such district is located, by serving written notice of appeal on the chairman of the board of directors and by filing in the office of the clerk of the superior court a copy of said notice of appeal with proof of service attached, together with a good and sufficient cost bond in the sum of two hundred dollars, said cost bond to run to such district and in all respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice must be served and filed within ten days from the date of the decision and order of such board of directors, and said bond must be filed within five days after the filing of such notice of appeal. Whenever notice of appeal and the cost bond as herein provided shall have been filed with the clerk of the superior court, the clerk shall notify the board of directors of such district thereof, and such board shall forthwith certify to said court all notices and records in said matters, together with proof of service, and a true copy of the order and decision pertaining thereto made by such board. If no appeal be perfected within ten days from the decision and order of such board, the same shall be deemed confirmed and the board shall certify the amount of such charges to the county treasurer who shall enter the same on the tax rolls against the land. When an appeal is perfected the matter shall be heard in the superior court de novo and the court's decision shall be conclusive on all persons served under this chapter: *Provided*, That an appeal may be taken to the supreme court or the court of appeals from the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such appeal, the amount of charges and costs adjudged to be paid shall be certified by the clerk of the superior court to the county treasurer and said treasurer shall proceed to enter the same on his rolls against the lands affected. [1971 c 81 § 56; 1929 c 125 § 14; RRS § 2778-6. Formerly RCW 17.04.220, part, and 17.04.230.]

Appeals to supreme court: Rules of court: See Rules of Appellate Procedure, Volume 0.

Cost bonds, civil procedure: RCW 4.84.210 through 4.84.240.

17.04.240 Assessments—Classification of property—Tax levy. The directors shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall prorate the cost so determined and shall levy assessments to be collected with the general taxes of the county. In the event that any bonded or warrant indebtedness pledging tax revenue of the district shall be outstanding on April 1, 1951, the directors may, for the sole purpose of retiring such indebtedness, continue to levy a tax upon all taxable property in the district until such bonded or warrant indebtedness shall have been retired. [1957 c 13 § 2. Prior: 1951 c 107 § 1; 1929 c 125 § 5, part; RRS § 2774-2.]

Validating—1957 c 13: "The provisions of this act are retroactive and any actions or proceedings had or taken under the provisions of RCW 17.04.240, 17.04.250, 17.04.260, 17.08.050, 17.08.060, 17.08.070, 17.08.080, 17.08.090, 17.08.100 or 17.08.110 are hereby ratified, validated and confirmed." [1957 c 13 § 14.]

17.04.245 Assessment—Tax roll—Collection. Such assessments as are made under the provisions of RCW 17.04.240, by the weed district commissioners, shall be spread by the county assessor on the general tax roll in a separate item. Such assessments shall be collected and accounted for with the general taxes, with the terms and penalties thereto attached. [1951 1st ex.s. c 6 § 1.]

17.04.250 District treasurer—Duties—Fund. The county treasurer shall be ex officio treasurer of such district and the county assessor and other county officers shall take notice of the formation of such district and of the tax levy and shall extend the tax on the tax roll against the property liable therefor the same as other taxes are extended, and such tax shall become a general tax against such property, and shall be collected and accounted for as other taxes, with the terms and penalties thereto attached. The moneys collected from such tax shall be paid into a fund to be known as "fund of weed district _____ of _____ county" (giving the number of district and name of county). All expenses in connection with the operation of such district, including the expenses of initial and annual meetings, shall be paid from such fund, upon vouchers approved by the board of directors of such district. [1957 c 13 § 3. Prior: 1929 c 125 § 5, part; 1921 c 150 § 5; RRS § 2775.]

17.04.260 Limit of indebtedness. No weed district shall contract any obligation in any year in excess of the total of the funds which will be available during the current year from the tax levy made in the preceding year and funds received in the current year from services rendered and from any other lawful source, and funds accumulated from previous years. [1963 c 52 § 1; 1961 c

250 § 9; 1957 c 13 § 4. Prior: 1929 c 125 § 5, part; 1921 c 150 § 8; RRS § 2778.]

17.04.270 Districts organized under prior law—Reorganization. Any weed district heretofore organized under any law of the state of Washington may become a weed district under the provisions of this chapter and entitled to exercise all the powers and subject to the limitations of a weed district organized under this chapter by the election of three directors for such weed district which shall be done in the same manner as is provided in this chapter for the election of the first directors of a district organized under this chapter. [1929 c 125 § 15; RRS § 2778–7.]

17.04.280 Officials of district may enter lands—Penalty for prevention. All weed district directors, all weed inspectors, and all official agents of all weed districts, in the performance of their official duties, have the right to enter and go upon any of the lands within their weed district at any reasonable time for any reason necessary to effectuate the purposes of the weed district. Any person who prevents or threatens to prevent any lawful agent of the weed district, after said agent identifies himself and the purpose for which he is going upon the land, from entering or going upon the land within said weed district at a reasonable time and for a lawful purpose of the weed district, is guilty of a misdemeanor. [1961 c 250 § 10.]

17.04.900 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

17.04.910 Continuation or dissolution of district—Noxious weed control boards. See RCW 17.10.900.

Chapter 17.06

INTERCOUNTY WEED DISTRICTS

Sections

17.06.010	Definitions.
17.06.020	Intercounty weed districts authorized.
17.06.030	Petition for formation—Notice of hearing.
17.06.040	Hearing—Boundaries—Order of establishment.
17.06.050	Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms—Rules.
17.06.060	Directors powers and duties—Taxation—Treasurer—Costs.
17.06.070	Actions of county officers—Costs.
17.06.900	Continuation or dissolution of district—Noxious weed control boards.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

17.06.010 Definitions. As used in this chapter, unless the context indicates otherwise, "principal board of county commissioners", "principal county treasurer", and "principal county auditor" mean respectively those in the county of that part of the proposed intercounty weed district in which the greatest amount of acreage is located. [1959 c 205 § 1.]

17.06.020 Intercounty weed districts authorized. An intercounty weed district, including all or any part of two counties or more, may be created for the purposes set forth in RCW 17.04.010 by the joint action of the boards of county commissioners of the counties in which any portion of the proposed district is located. [1959 c 205 § 2.]

17.06.030 Petition for formation—Notice of hearing. Any one or more freeholders owning more than fifty percent of the acreage desired to be included within the proposed intercounty weed district may file a petition with the principal board of county commissioners praying that their land be included, either separately or with other lands included in the petition, in a weed district to be formed for the purpose of destroying, preventing or exterminating any one or all such weeds, or that such lands be included within a district already formed, or a new district or districts to be formed out of any district or districts then existing. Such petition shall state the boundaries of the proposed district, the approximate number of acres in the proposed district, the particular weed or weeds to be destroyed, prevented or exterminated, the general method or means to be used in such work, and shall contain a list of all known landowners within the proposed district, together with the addresses of such landowners. Upon the filing of such petition the principal board of county commissioners shall notify the other boards of commissioners, shall arrange a time for a joint hearing on the petition, and shall give at least thirty days' notice of the time and place of such hearing by posting copies of such notice in three conspicuous places within the proposed district, and at the main entrance to the court house of each county, and by mailing a copy of such notice to each of the landowners named in the petition at the address named therein. If any of the land described in the petition be owned by the state a copy thereof shall be mailed to the state land commissioner at Olympia. [1959 c 205 § 3.]

17.06.040 Hearing—Boundaries—Order of establishment. At the time and place fixed for such hearing, with the chairman of the principal board acting as chairman, the respective boards shall determine by a majority vote of each of the boards of county commissioners of the counties whether such intercounty weed district shall be created, and if they determine that such district shall be created, the respective boards shall fix the boundaries of the portion of the proposed district within their respective counties, but they shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented and exterminated as set forth in the petition, and they shall not enlarge the boundary of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice, as provided in RCW 17.06.030, to all landowners interested. If the respective bodies shall determine that the weed district petitioned for shall be created each such board shall thereupon enter an order establishing and defining the

boundary lines of the proposed district within its respective county. A number shall be assigned to such weed district which shall be the lowest number not already taken or adopted by an intercounty weed district in the state, and thereafter such district shall be known as "weed district No. -----", inserting in the blank the number of the district.

If any county represented does not by a majority vote of its board of commissioners support the petition for an intercounty district, the petition shall be dismissed. [1959 c 205 § 4.]

17.06.050 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms—Rules. If the respective boards of county commissioners establish such district the chairman of the principal board shall call a special meeting of landowners to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established.

Notice of such meeting shall be given by the principal county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the chairman shall appoint two persons to assist him in conducting the election, one of whom shall act as clerk. If such chairman be not present the electors of such district then present shall elect a chairman of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chairman of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. ----- (giving number of district)." If the challenged person shall take such oath or make such affirmation, he shall be entitled to vote; otherwise his vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he desires as the first directors of such district and shall fold his ballot and hand

the same to the chairman of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chairman shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first day of March following his election.

Annually thereafter, there shall be held a meeting of the electors of such district on the first Monday in February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time when and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the remaining members of the board of directors shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chairman and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the principal board of county commissioners, which bond shall be filed with the same board and shall be conditioned for the faithful discharge of his duties. The cost of such bond shall be paid by the district the same as other expenses of the district.

At any annual meeting the method for destroying, preventing and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. [1971 ex.s. c 292 § 16; 1959 c 205 § 5.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

17.06.060 Directors powers and duties—Taxation—Treasurer—Costs. The board of directors of an intercounty weed district shall have the same powers and duties as the board of directors of a weed district located entirely within one county, and all the provisions of chapter 17.04 RCW are hereby made applicable to intercounty weed districts: *Provided*, That in the case of evaluation, assessment, collection, apportionment, and any other allied power or duty relating to taxes in connection with the district, the action shall be performed by the officer or board of the county for that area of the district which is located within his respective county, and all materials, information, and other data and all moneys collected shall be submitted to the proper officer of the county of that part of the district in which the greatest amount of acreage is located. Any power which may be or duty which shall be performed in connection therewith shall be performed by the officer or board receiving such as though only a district in a single county were concerned. All moneys collected from such area constituting a part of such district that should be paid to such district shall be delivered to the principal county treasurer who shall be ex officio treasurer of such district. All other materials, information, or data relating to the district shall be submitted to the district board of directors.

Any costs or expenses incurred under this section shall be borne proportionately by each county involved. [1959 c 205 § 6.]

17.06.070 Actions of county officers—Costs. Whenever any action is required or may be performed by any county officer or board for all purposes essential to the maintenance, operation, and administration of the district, such action shall be performed by the respective officer or board of the county of that part of the district in which the greatest amount of acreage of the district is located.

All costs incurred shall be borne proportionately by each county in that ratio which the amount of acreage of the district located in that part of each county forming a part of the district bears to the total amount of acreage located in the whole district. [1959 c 205 § 7.]

17.06.900 Continuation or dissolution of district—Noxious weed control boards. See RCW 17.10.900.

Chapter 17.10

NOXIOUS WEEDS—CONTROL BOARDS

Sections

- 17.10.010 Definitions.
- 17.10.020 County noxious weed control boards—Created—Jurisdiction—Inactive status.
- 17.10.030 State noxious weed control board—Members—Terms—Elections—Meetings—Reimbursement for travel expenses.
- 17.10.040 Activation of inactive county noxious weed control board.
- 17.10.050 Activated county noxious weed control board—Members—Election—Terms—Meetings—Quorum—Expenses—Officers—Vacancy.

- 17.10.060 Activated county noxious weed control board—Weed coordinator—Authority—Rules and regulations.
- 17.10.070 State noxious weed control board—Powers—Report.
- 17.10.074 Director—Powers.
- 17.10.080 State noxious weed list—Hearing—Adoption—Dissemination.
- 17.10.090 State noxious weed list—Selection of weeds for control by county board.
- 17.10.100 Order to county board to include weed from state board's list in county's noxious weed list.
- 17.10.110 Regional noxious weed control board—Creation.
- 17.10.120 Regional noxious weed control board—Members—Meetings—Quorum—Officers—Effect on county boards.
- 17.10.130 Regional noxious weed control board—Powers and duties.
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- 17.10.150 Owner's duty in controlling noxious weeds on nonagricultural land—Buffer strip defined—Limitation.
- 17.10.154 Owners' agreements with county noxious weed control boards—Terms—Enforcement.
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- 17.10.240 Special assessments, appropriations for noxious weed control—Assessment rates.
- 17.10.250 Applications for noxious weed control funds.
- 17.10.260 Administrative powers to be exercised in conformity with administrative procedure act—Use of weed control substances subject to other acts.
- 17.10.270 Noxious weed control boards—Authority to obtain insurance or surety bonds.
- 17.10.280 Lien for labor, material, equipment used in controlling noxious weeds.
- 17.10.290 Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien.
- 17.10.300 Lien for labor, material, equipment used in controlling noxious weeds—Claim—Filing—Contents.
- 17.10.310 Notice of infraction—Issuance—Refusal to identify self or respond to notice a misdemeanor.
- 17.10.320 Notice of infraction—Response—Failure to respond—Assessment of penalty.
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- 17.10.340 Commission of infraction—Mitigating circumstances—Hearing.
- 17.10.350 Infraction—Penalty.
- 17.10.890 Deactivation of county noxious weed control board—Hearing.
- 17.10.900 Weed districts—Continuation—Dissolution.
- 17.10.905 Purpose—Construction—1975 1st ex.s. c 13.
- 17.10.910 Severability—1969 ex.s. c 113.

17.10.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Noxious weed" means any plant which when established is highly destructive, competitive, or difficult to control by cultural or chemical practices.

(2) "State noxious weed list" means a list of noxious weeds adopted by the state noxious weed control board which list is divided into three classes:

(a) Class A shall consist of those noxious weeds not native to the state that are of limited distribution or are unrecorded in the state and that pose a serious threat to the state;

(b) Class B shall consist of those noxious weeds not native to the state that are of limited distribution or are unrecorded in a region of the state and that pose a serious threat to that region;

(c) Class C shall consist of any other noxious weeds.

(3) "Person" means any individual, partnership, corporation, firm, the state or any department, agency, or subdivision thereof, or any other entity.

(4) "Owner" means the person in actual control of property, or his agent, whether such control is based on legal or equitable title or on any other interest entitling the holder to possession and, for purposes of liability, pursuant to RCW 17.10.170 or 17.10.210, means the possessor of legal or equitable title or the possessor of an easement: *Provided*, That when the possessor of an easement has the right to control or limit the growth of vegetation within the boundaries of an easement, only the possessor of such easement shall be deemed, for the purpose of this chapter, an "owner" of the property within the boundaries of such easement.

(5) As pertains to the duty of an owner, the words "control", "contain", "eradicate", and the term "prevent the spread of noxious weeds" shall mean conforming to the standards of noxious weed control or prevention adopted by rule or regulation by the state noxious weed control board and an activated county noxious weed control board.

(6) "Agent" means any occupant or any other person acting for the owner and working or in charge of the land.

(7) "Agricultural purposes" are those which are intended to provide for the growth and harvest of food and fiber.

(8) "Director" means the director of the department of agriculture or the director's appointed representative.

(9) "Weed district" means a weed district as defined in chapters 17.04 and 17.06 RCW. [1987 c 438 § 1; 1975 1st ex.s. c 13 § 1; 1969 ex.s. c 113 § 1.]

17.10.020 County noxious weed control boards—Created—Jurisdiction—Inactive status. (1) In each county of the state there is hereby created a noxious weed control board, which shall bear the name of the county within which it is located. The jurisdictional boundaries of each board shall be coextensive with the boundaries of the county within which it is located.

(2) Each noxious weed control board shall be inactive until activated pursuant to the provisions of RCW 17.10.040. [1969 ex.s. c 113 § 2.]

17.10.030 State noxious weed control board—Members—Terms—Elections—Meetings—Reimbursement for travel expenses. There is hereby created a state noxious weed control board which shall be comprised of nine voting members. Four of the members shall be elected by the members of the various activated county noxious weed control boards, shall be residents of a county in which a county noxious weed control board has been activated and a member of said board, and those qualifications shall continue through their term of office. Two such members shall be elected from the west side of the state, the crest of the Cascades being the dividing line, and two from the east side of the state. The director of agriculture shall be a member of the board. One member shall be elected by the directors of the various active weed districts formed under chapter 17.04 or 17.06 RCW. The Washington state association of counties shall appoint one voting member who shall be a member of a county legislative authority. The director shall appoint three nonvoting members representing scientific disciplines relating to weed control. The director shall also appoint two voting members to represent the public interest, one from the west side and one from the east side of the state. The term of office for all members of the board shall be three years from the date of election or appointment.

The board, by rule, shall establish a position number for each elected position of the board and shall designate which county noxious weed control board members are eligible to vote for each elected position. The elected members shall serve staggered terms. Elections for the elected members of the board shall be held thirty days prior to the expiration date of their respective terms. Nominations and elections shall be by mail and conducted by the board.

The board shall conduct its first meeting within thirty days after all its members have been elected. The board shall elect from its members a chairman and such other officers as may be necessary. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The members of the board shall serve without salary, but shall be reimbursed for travel expenses incurred in the performance of their duties under this chapter in accordance with RCW 43.03-.050 and 43.03.060 as now existing or hereafter amended. [1987 c 438 § 2; 1975-'76 2nd ex.s. c 34 § 23; 1969 ex.s. c 113 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

17.10.040 Activation of inactive county noxious weed control board. An inactive county noxious weed control board may be activated by any one of the following methods:

(1) Either within sixty days after a petition is filed by one hundred registered voters within the county or, on its own motion, the county legislative authority shall hold a hearing to determine whether there is a need, due to a damaging infestation of noxious weeds, to activate the county noxious weed control board. If such a need is

found to exist, then the county legislative authority shall, in the manner provided by RCW 17.10.050, appoint five persons to hold seats on the county's noxious weed control board.

(2) If the county's noxious weed control board is not activated within one year following a hearing by the county legislative authority to determine the need for activation, then upon the filing with the state noxious weed control board of a petition comprised either of the signatures of at least two hundred registered voters within the county, or of the signatures of a majority of an adjacent county's noxious weed control board, the state board shall, within six months of the date of such filing, hold a hearing in the county to determine the need for activation. If a need for activation is found to exist, then the state board shall order the county legislative authority to activate the county's noxious weed control board and to appoint members to such board in the manner provided by RCW 17.10.050.

(3) The director, with notice to the state noxious weed control board, may order a county legislative authority to activate the noxious weed control board immediately if an infestation of a class A noxious weed or class B noxious weed designated for control within the region wherein the county lies as defined in RCW 17.10.080 is confirmed in that county. The county legislative authority may, as an alternative to activating the noxious weed board, combat the class A noxious weed or class B noxious weed with county resources and personnel operating with the authorities and responsibilities imposed by this chapter on a county noxious weed control board. No county may continue without a noxious weed control board for a second consecutive year if the class A noxious weed or class B noxious weed designated for control within the region wherein the county lies has not been eradicated. [1987 c 438 § 3; 1975 1st ex.s. c 13 § 2; 1969 ex.s. c 113 § 4.]

17.10.050 Activated county noxious weed control board—Members—Election—Terms—Meetings—Quorum—Expenses—Officers—Vacancy.

(1) Each activated county noxious weed control board shall consist of five voting members who shall be appointed by the county legislative authority. In appointing such voting members, the county legislative authority shall divide the county into five sections, none of which shall overlap and each of which shall be of the same approximate area, and shall appoint a voting member from each section. At least four of the voting members shall be engaged in the primary production of agricultural products. There shall be one nonvoting member on such board who shall be the chief county extension agent or an extension agent appointed by the chief county extension agent. Each voting member of the board shall serve a term of four years, except that the county legislative authority shall, when a board is first activated under this chapter, designate two voting members to serve terms of two years. The board members shall not receive a salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties.

(2) The voting members of the board shall represent the same sections designated by the county legislative authority in appointing members to the board at its inception and shall serve until their replacements are appointed. New members of the board shall be appointed at least thirty days prior to the expiration of any board member's term of office.

Notice of expiration of a term of office shall be published at least twice in a weekly or daily newspaper of general circulation in said section with last publication occurring at least ten days prior to the nomination. All persons interested in appointment to the board and residing in the section with a pending nomination shall make a written application that includes the signatures of at least ten registered voters residing in the section supporting the nomination to the county noxious weed control board. After nominations close, the county noxious weed control board shall, after a hearing, send the applications to the county legislative authority recommending the names of the most qualified candidates, and shall post the names of those nominees in the county courthouse and in three places in the section. The county legislative authority, within ten days of receiving the list of nominees, shall appoint one of those nominees to the county noxious weed control board to represent that section during that term of office.

(3) Within thirty days after all the members have been appointed, the board shall conduct its first meeting. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairperson and such other officers as may be necessary.

(4) In case of a vacancy occurring in any voting position on a county noxious weed control board, the county legislative authority of the county in which such board is located shall appoint a qualified person to fill the vacancy for the unexpired term. [1987 c 438 § 4; 1980 c 95 § 1; 1977 ex.s. c 26 § 6; 1975 1st ex.s. c 13 § 3; 1974 ex.s. c 143 § 1; 1969 ex.s. c 113 § 5.]

17.10.060 Activated county noxious weed control board—Weed coordinator—Authority—Rules and regulations.

(1) Each activated county noxious weed control board may employ a weed coordinator whose duties shall be fixed by the board but which shall include inspecting land to determine the presence of noxious weeds. Within sixty days from initial employment the weed coordinator shall obtain a pest control consultant license, a pesticide operator license, and the necessary endorsements on the licenses as required by law. Each board may purchase, rent or lease such equipment, facilities or products and may hire such additional persons as it deems necessary for the administration of the county's noxious weed control program.

(2) Each activated county noxious weed control board shall have the power to adopt such rules and regulations, subject to notice and hearing as provided in chapters 42.30 and 42.32 RCW as now or hereafter amended, as are necessary for an effective county weed control or

eradication program. [1987 c 438 § 5; 1969 ex.s. c 113 § 6.]

17.10.070 State noxious weed control board—Powers—Report. (1) In addition to the powers conferred on the state noxious weed control board under other provisions of this chapter, it shall have power to:

(a) Employ a state noxious weed control board executive secretary who shall disseminate information relating to noxious weeds to county noxious weed control boards and weed districts and who shall work to coordinate the educational and weed control efforts of the various county and regional noxious weed control boards and weed districts;

(b) Adopt, amend, change, or repeal such rules, pursuant to the administrative procedure act, chapter 34.04 RCW, as may be necessary to carry out the duties and authorities assigned to the board by this chapter.

(2) The state noxious weed control board shall provide a written report before January 1 of each odd-numbered year to the governor, the legislature, the county noxious weed control boards, and the weed districts showing the funds disbursed by the department to each noxious weed control board or district, specifically how the funds were spent, and recommendations for the continued best use of state funds for noxious weed control. The report shall include recommendations as to the long-term needs regarding weed control. [1987 c 438 § 6; 1975 1st ex.s. c 13 § 4; 1969 ex.s. c 113 § 7.]

17.10.074 Director—Powers. (1) In addition to the powers conferred on the director under other provisions of this chapter, the director shall, with the advice of the state noxious weed control board, have power to:

(a) Require the county legislative authority or the noxious weed control board of any county or any weed district to report to it concerning the presence, absence, or estimated amount of noxious weeds and measures, if any, taken or planned for the control thereof;

(b) Employ such staff as may be necessary in the administration of this chapter;

(c) Adopt, amend, change, or repeal such rules, pursuant to the administrative procedure act, chapter 34.04 RCW, as may be necessary to carry out this chapter;

(d) Do such things as may be necessary and incidental to the administration of its functions pursuant to this chapter including but not limited to surveying for and detecting noxious weed infestations;

(e) Upon receipt of a complaint signed by a majority of the members of an adjacent county noxious weed control board or weed district, require the county legislative authority or noxious weed control board of the county or weed district that is the subject of the complaint to respond to the complaint within forty-five days with a plan for the control of the noxious weeds cited in the complaint;

(f) If the complaint in subsection (e) of this section involves a class A or class B noxious weed, order the county legislative authority, noxious weed control board, or weed district to take immediate action to eradicate or control the noxious weed infestation. If the county or the

weed district does not take action to control the noxious weed infestation in accordance with the order, the director may control it or cause it to be controlled. The county or weed district shall be liable for payment of the expense of the control work including necessary costs and expenses for attorneys' fees incurred by the director in securing payment from the county or weed district;

(g) In counties which have not activated their noxious weed control board, enter upon any property as provided for in RCW 17.10.160, issue or cause to be issued notices and citations and take the necessary action to control noxious weeds as provided in RCW 17.10.170, hold hearings on any charge or cost of control action taken as provided for in RCW 17.10.180, issue a notice of civil infraction as provided for in RCW 17.10.230, and 17.10.310 through 17.10.350, and place a lien on any property pursuant to RCW 17.10.280, 17.10.290, and 17.10.300 with the same authorities and responsibilities imposed by these sections on county noxious weed control boards;

(h) Adopt a list of noxious weed seeds and toxic weeds which shall be controlled in designated articles, products, or feed stuffs as provided for in RCW 17.10.235.

(2) The moneys appropriated for noxious weed control to the department shall be used for administration of the state noxious weed control board for determining the economic impact of noxious weeds in the state of Washington, the purchase of materials for controlling, containing, or eradicating noxious weeds, the purchase or collection of biological control agents for controlling noxious weeds, and the contracting for services to carry out the purposes of this chapter. In a county with an activated noxious weed control board, the director shall make every effort to contract with that board for the needed services.

(3) If the director determines the need to reallocate funds previously designated for county use, the director shall convene a meeting of the state noxious weed control board to seek its advice concerning any reallocation. [1987 c 438 § 7.]

17.10.080 State noxious weed list—Hearing—Adoption—Dissemination. (1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) At the hearing any person may request the inclusion of any plant to the lists to be adopted by the state noxious weed control board. Any hearing held pursuant to this section shall conform to the administrative procedure act, chapter 34.04 RCW: *Provided*, That adding a weed to or deleting a weed from the list shall constitute a substantial change as provided for in RCW 34.04.025(2).

The state noxious weed control board shall send a copy of the lists to each activated county noxious weed control board, to each regional noxious weed control board, to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board. The record of hearing shall include the written findings of the board for the inclusion of each plant on the list. Such findings shall be made available

upon request to any interested person. [1987 c 438 § 8; 1975 1st ex.s. c 13 § 5; 1969 ex.s. c 113 § 8.]

17.10.090 State noxious weed list—Selection of weeds for control by county board. Each county noxious weed control board shall, within thirty days of the receipt of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the class C list and those weeds from the class B list not designated for control in the noxious weed control region in which the county lies which it finds necessary to be controlled in the county. The weeds thus selected and all class A weeds and those class B weeds that have been designated for control in the noxious weed control region in which the county lies shall be classified within that county as noxious weeds, and those weeds shall comprise the county noxious weed list. [1987 c 438 § 9; 1969 ex.s. c 113 § 9.]

17.10.100 Order to county board to include weed from state board's list in county's noxious weed list. Where any of the following occur, the state noxious weed control board may, following a hearing, order any county noxious weed control board or weed district to include a noxious weed from the state board's list in the county's noxious weed list:

(1) Where the state noxious weed control board receives a petition from at least one hundred registered voters within the county requesting that the weed be listed.

(2) Where the state noxious weed control board receives a request for such inclusion from an adjacent county's noxious weed control board or weed district, which board or district has included that weed in the county list and which board or weed district alleges that its noxious weed control program is being hampered by the failure to include the weed on the county's noxious weed list. [1987 c 438 § 10; 1969 ex.s. c 113 § 10.]

17.10.110 Regional noxious weed control board—Creation. A regional noxious weed control board comprising the area of two or more counties may be created as follows:

The county legislative authority and/or noxious weed control board of two or more counties may, upon a determination that the purpose of this chapter will be served by the creation of a regional noxious weed control board, adopt a resolution providing for a limited merger of the functions of their respective counties noxious weed control boards. Such resolution shall become effective only when a similar resolution is adopted by the other county or counties comprising the proposed regional board. [1987 c 438 § 11; 1975 1st ex.s. c 13 § 6; 1969 ex.s. c 113 § 11.]

17.10.120 Regional noxious weed control board—Members—Meetings—Quorum—Officers—Effect on county boards. In any case where a regional noxious weed control board is created, the county noxious weed control boards comprising the regional board

shall still remain in existence and shall retain all powers and duties provided for such boards under this chapter.

The regional noxious weed control board shall be comprised of the voting members and the nonvoting members of the component counties noxious weed control boards or county legislative authorities who shall, respectively, be the voting and nonvoting members of the regional board: *Provided*, That each county shall have an equal number of voting members. The board may appoint other nonvoting members as deemed necessary. A majority of the voting members of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect a chairperson from its members and such other officers as may be necessary. Members of the regional board shall serve without salary but shall be compensated for actual and necessary expenses incurred in the performance of their official duties. [1987 c 438 § 12; 1969 ex.s. c 113 § 12.]

17.10.130 Regional noxious weed control board—Powers and duties. The powers and duties of a regional noxious weed control board are as follows:

(1) The regional board shall, within thirty days of the receipt of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the state list which it finds necessary to be controlled on a regional basis. The weeds thus selected shall also be contained in the county noxious weed list of each county in the region.

(2) The regional board shall take such action as may be necessary to coordinate the noxious weed control programs of the region and shall adopt a regional plan for the control of noxious weeds. [1987 c 438 § 13; 1969 ex.s. c 113 § 13.]

17.10.134 Liability of county and regional noxious weed control boards. Obligations or liabilities incurred by any county or regional noxious weed control board or any claims against a county or regional noxious weed control board shall be governed by chapter 4.96 RCW or RCW 4.08.120: *Provided*, That individual members or employees of a county noxious weed control board shall be personally immune from civil liability for damages arising from actions performed within the scope of their official duties or employment. [1987 c 438 § 14.]

17.10.140 Owner's duty to control spread of noxious weeds. Except as is provided under RCW 17.10.150, every owner shall perform, or cause to be performed such acts as may be necessary to control and to prevent the spread of noxious weeds from his property. [1969 ex.s. c 113 § 14.]

17.10.150 Owner's duty in controlling noxious weeds on nonagricultural land—Buffer strip defined—Limitation. (1) The county noxious weed control board in each county may classify lands for the purposes of this chapter. In regard to any land which is classified by the county noxious weed control board as not being used for agricultural purposes, the owner thereof shall have

the following limited duty to control noxious weeds present on such land:

(a) The owner shall eradicate all class A noxious weeds, and shall control and prevent the spread of class B noxious weeds designated for control within the region in which such land lies. The owner shall also control and prevent the spread of class C noxious weeds on any portion of such land which is within the buffer strip around land used for agricultural purposes. The buffer strip shall be all land which is within one thousand feet of land used for agricultural purposes.

(b) In any case of a serious infestation of a particular noxious weed, which infestation exists within the buffer strip of land described in paragraph (a) of subsection (1) of this section, and which extends beyond said buffer strip of land, the county noxious weed control board may require that the owner of such buffer strip of land take such measures, both within said buffer strip of land as well as on other land owned by said owner contiguous to said buffer strip of land on which such serious infestation has spread, as are necessary to control and prevent the spread of such particular noxious weed.

(c) Forest lands classified pursuant to RCW 17.10.240(3) shall be subject to the weed control requirements established in subsection (1) (a) and (b) of this section at all times whether such lands are used for agricultural purposes or are not used for such purposes. In addition, forest lands shall be subject to RCW 17.10.140 and all other provisions of this chapter for a single five-year period designated by the county noxious weed control board following the harvesting of trees for timber.

(2) In regard to any land which is classified by the county noxious weed control board as scab or range land, the board may limit the duty of the owner thereof to control class C noxious weeds present on such land. The board may share the cost of controlling such weeds, may provide for a buffer strip around the perimeter of such land or may take any other reasonable measures to control or contain noxious weeds on such land at an equitable cost to the owner. The board shall classify as range or scab land all that land within the county for which the board finds that the cost of controlling all of the noxious weeds present would be disproportionately high when compared to the benefits derived from noxious weed control on such land. [1987 c 438 § 15; 1975 1st ex.s. c 13 § 7; 1974 ex.s. c 143 § 2; 1969 ex.s. c 113 § 15.]

17.10.154 Owners' agreements with county noxious weed control boards—Terms—Enforcement. It is recognized that the prevention, control, and eradication of noxious weeds presents a problem for immediate as well as for future action. It is further recognized that immediate prevention, control, and eradication is practicable on some lands and that prevention, control, and eradication on other lands should be extended over a period of time. Therefore, it is the intent of this chapter that county noxious weed control boards may use their discretion and, by agreement with the owners of land,

may propose and accept plans for prevention, control, and eradication which may be extended over a period of years. The county noxious weed control board may make an agreement with the owner of any parcel of land by contract between the landowner and the respective county noxious weed control board, and the board shall enforce the terms of any agreement. The county noxious weed control board may make any terms which will best serve the interests of the owners of the parcel of land and the common welfare which comply with this chapter and the rules adopted thereunder. [1987 c 438 § 16.]

17.10.160 Right of entry—Warrant for noxious weed search—Civil liability—Penalty for preventing entry. Any authorized agent or employee of the county noxious weed control board or of the state noxious weed control board or of the department of agriculture where not otherwise proscribed by law may enter upon any property for the purpose of administering this chapter and any power exercisable pursuant thereto, including the taking of specimens of weeds or other materials, general inspection, and the performance of eradication or control work. Prior to carrying out the purposes for which the entry is made, the official making such entry or someone in his or her behalf, shall have first made a reasonable attempt to notify the owner of the property as to the purpose and need for the entry.

(1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution upon which noxious weeds are standing or growing and the owner thereof refuses permission to inspect the property, a judge of the superior court or district court in the county in which such property is located may, upon the request of the county noxious weed control board or its agent, issue a warrant directed to such board or agent authorizing the search for the noxious weeds described in the request for the warrant.

(2) Application for issuance and execution and return of the warrant authorized by this section shall be in accordance with the applicable rules of the superior court or the district courts.

(3) Nothing in this section requires the application for and issuance of any warrant not otherwise required by law: *Provided*, That civil liability for negligence shall lie in any case in which entry and any of the activities connected therewith are not undertaken with reasonable care.

(4) Any person who improperly prevents or threatens to prevent entry upon land as authorized in this section or any person who interferes with the carrying out of this chapter shall be upon conviction guilty of a misdemeanor. [1987 c 438 § 17; 1969 ex.s. c 113 § 16.]

17.10.170 Finding presence of noxious weeds—Notice for failure of owner to control—Control by county board—Liability of owner—Lien—Alternative. (1) Whenever the county noxious weed control board finds that noxious weeds are present on any parcel of land, and that the owner thereof is not taking prompt and sufficient action to control the same, pursuant to the

provisions of RCW 17.10.140 and 17.10.150, it shall notify the owner that a violation of this chapter exists. The notice shall be in writing and sent by certified mail, and shall identify the noxious weeds found to be present, order prompt control action, and specify the time, of at least ten days from issuance of the notice, within which the prescribed action must be taken. Upon deposit of the certified letter of notice, the noxious weed control authority shall make an affidavit of mailing which shall be prima facie evidence that proper notice was given. If seed dispersion is imminent, immediate control action may be taken forty-eight hours following the time that notification is reasonably expected to have been received by the owner or agent by certified mail or personal service.

(2) The county noxious weed control board or its authorized agents may issue a notice of civil infraction as provided for in RCW 17.10.230 and 17.10.310 through 17.10.350 to owners who do not take action to control noxious weeds in accordance with the notice.

(3) If the owner does not take action to control the noxious weeds in accordance with the notice, the county board may control them, or cause their being controlled, at the expense of the owner. The amount of such expense shall constitute a lien against the property and may be enforced by proceedings on such lien except as provided for by RCW 79.44.060. The owner shall be liable for payment of the expense, and nothing in this chapter shall be construed to prevent collection of any judgment on account thereof by any means available pursuant to law, in substitution for enforcement of the lien. Necessary costs and expenses including reasonable attorneys' fees incurred by the county noxious weed control board in carrying out this section may be recovered at the same time as a part of the action filed under this section. Funds received in payment for the expense of controlling noxious weeds shall be transferred to the county noxious weed control board to be expended as required to carry out the purposes of this chapter.

(4) The county auditor shall record in his office any lien created under this chapter, and any such lien shall bear interest at the rate of twelve percent per annum from the date on which the county noxious weed control board approves the amount expended in controlling such weeds.

(5) As an alternative to the enforcement of any lien created under subsection (3) of this section, the county legislative authority may by resolution or ordinance require that each such lien created shall be collected by the treasurer in the same manner as a delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes shall bear interest at the rate of twelve percent per annum and such interest shall accrue as of the date notice of the lien is sent to the owner: *Provided*, That any collections for such lien shall not be considered as tax. [1987 c 438 § 18; 1979 c 118 § 1; 1975 1st ex.s. c 13 § 8; 1974 ex.s. c 143 § 3; 1969 ex.s. c 113 § 17.]

17.10.180 Hearing on liability for expense of control—Notice—Review. Any owner, upon request pursuant to the rules and regulation of the county noxious weed control board, shall be entitled to a hearing before the board on any charge or cost for which the owner is alleged to be liable pursuant to RCW 17.10.170 or 17.10.210. The board shall send notice by certified mail within thirty days, to each owner at the owner's last known address, as to any such charge or cost and as to his right of a hearing. The hearing shall be scheduled within forty-five days of notification. Any determination or final action by the board shall be subject to judicial review by a proceeding in the superior court in the county in which the property is located, and such court shall have original jurisdiction to determine any suit brought by the owner to recover damages allegedly suffered on account of control work negligently performed: *Provided*, That no stay or injunction shall lie to delay any such control work subsequent to notice given pursuant to RCW 17.10.160 or pursuant to an order under RCW 17.10.210. [1987 c 438 § 19; 1969 ex.s. c 113 § 18.]

17.10.190 Notice and information as to noxious weed control. Each activated county noxious weed control board shall cause to be published annually and at such other times as may be appropriate in at least one newspaper of general circulation within its area a general notice. The notice shall direct attention to the need for noxious weed control and shall give such other information with respect thereto as may be appropriate, or shall indicate where such information may be secured. In addition to the general notice required hereby, the county noxious weed control board may use any appropriate media for the dissemination of information to the public as may be calculated to bring the need for noxious weed control to the attention of owners. The board may consult with individual owners concerning their problems of noxious weed control and may provide them with information and advice, including giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, or use of livestock. Publication of a notice as required by this section shall not be a condition precedent to the enforcement of this chapter. [1987 c 438 § 20; 1975 1st ex.s. c 13 § 9; 1969 ex.s. c 113 § 19.]

17.10.200 Control of noxious weeds on federal and Indian lands. (1) In the case of land owned by the United States on which control measures of a type and extent required pursuant to this chapter have not been taken, the local noxious weed control authority, with the approval of both the director of the department of agriculture and the appropriate federal agency, may perform, or cause to be performed, such work. The cost thereof, if not paid by the agency managing the land, may be paid from any funds available to the department of agriculture or the local noxious weed control authority for the administration of this chapter.

(2) The county noxious weed control board is authorized to enter into any reasonable agreement with the appropriate authorities for the control of noxious weeds on Indian or federal lands.

(3) The state shall make all possible efforts to obtain reimbursement from the federal government for costs incurred under this section: *Provided*, That the state shall actively seek to inform the federal government of the need for noxious weed control on federally owned land where the presence of noxious weeds adversely affects local control efforts: *Provided further*, That the state shall actively seek adequate federal funding for noxious weed control on Indian or federally owned land. [1987 c 438 § 21; 1979 c 118 § 3; 1969 ex.s. c 113 § 20.]

17.10.205 Control of noxious weeds in open areas. Open areas subject to the spread of noxious weeds, other than crop land, including but not limited to subdivisions, school grounds, playgrounds, parks, and rights of way shall be subject to regulation by activated county noxious weed control boards in the same manner and to the same extent as is provided for agricultural lands. [1975 1st ex.s. c 13 § 16.]

17.10.210 Quarantine of land—Order—Expense. (1) Whenever the director or the county noxious weed control board or a weed district finds that a parcel of land is so seriously infested with class A or class B noxious weeds that control measures cannot be undertaken thereon without quarantining the land and restricting or denying access thereto or use thereof, the director or the county noxious weed control board or weed district, with the approval of the director of the department of agriculture, may issue an order for such quarantine and restriction or denial of access or use. Upon issuance of the order, the director or the county noxious weed control board or weed district shall commence necessary control measures and shall prosecute them with due diligence.

(2) An order of quarantine shall be served, by any method sufficient for the service of civil process, on all persons known to qualify as owners of the land within the meaning of this chapter.

(3) The director shall, with the advice of the state noxious weed control board, determine how the expense of control work undertaken pursuant to this section, and the cost of any quarantine in connection therewith, shall be apportioned. [1987 c 438 § 22; 1969 ex.s. c 113 § 21.]

17.10.230 Violations—Penalty. Any owner knowing of the existence of any noxious weeds on the owner's land who fails to control such weeds in accordance with this chapter and rules and regulations in force pursuant thereto; or any person who enters upon any land in violation of an order in force pursuant to RCW 17.10.210; or any person who interferes with the carrying out of the provisions of this chapter has committed a civil infraction. [1987 c 438 § 23; 1979 c 118 § 2; 1969 ex.s. c 113 § 23.]

17.10.235 Selling product, article, or feed containing noxious weed seeds or toxic weeds—Penalty—Rules—Inspections—Fees. (1) Any person who knowingly or negligently sells a product, article, or feed stuff designated under subsection (2) of this section containing noxious weed seeds or toxic weeds designated for control under subsection (2) of this section and in an amount greater than the amount established by the director for the seed or weed under subsection (2) of this section is guilty of a misdemeanor.

(2) The director of agriculture shall adopt, with the advice of the state noxious weed control board, rules designating noxious weed seeds the presence of which shall be controlled in products or articles to prevent the spread of noxious weeds. The rules shall identify the products and articles in which such seeds must be controlled and the maximum amount of such seed to be permitted in the product or article to avoid a hazard of spreading the noxious weed by seed from the product or article. The director shall also adopt, with the advice of the state board, rules designating toxic weeds the presence of which shall be controlled in feed stuffs to prevent injury to the animal that consumes the feed. The rules shall identify the feed stuffs in which the toxic weeds must be controlled and the maximum amount of the toxic weed to be permitted in such feed.

(3) The department of agriculture shall, upon request of the buyer, inspect products, articles, or feed stuffs designated under subsection (2) of this section and charge fees, in accordance with chapter 22.09 RCW, to determine the presence of designated noxious weed seeds or toxic weeds. [1987 c 438 § 30; 1979 c 118 § 4.]

17.10.240 Special assessments, appropriations for noxious weed control—Assessment rates. The activated county noxious weed control board of each county shall annually submit a budget to the county legislative authority for the operating cost of the county's weed program for the ensuing fiscal year: *Provided*, That if the board finds the budget approved by the legislative authority is insufficient for an effective county noxious weed control program it shall petition the county legislative authority to hold a hearing as provided in *RCW 17.10.890. Control of weeds is a special benefit to the lands within any such section. Funding for the budget shall be derived from either or both of the following:

(1) The county legislative authority may, in lieu of a tax, levy an assessment against the land for this purpose. Prior to the levying of an assessment the county noxious weed control board shall hold a public hearing at which it shall gather information to serve as a basis for classification and shall then classify the lands into suitable classifications, including but not limited to dry lands, range lands, irrigated lands, nonuse lands, forest lands, or federal lands. The board shall develop and forward to the county legislative authority, as a proposed level of assessment for each class, such an amount as shall seem just. The assessment rate shall be either uniform per acre in its respective class or a flat rate per parcel rate plus a uniform rate per acre: *Provided*, That if no special benefits should be found to accrue to a class of land, a

zero assessment may be levied. The legislative authority, upon receipt of the proposed levels of assessment from the board, after a hearing, shall accept, modify, or refer back to the board for its reconsideration all or any portion of the proposed levels of assessment. The findings by the county legislative authority of such special benefits, when so declared by resolution and spread upon the minutes of said authority shall be conclusive as to whether or not the same constitutes a special benefit to the lands within the section. The amount of such assessment shall constitute a lien against the property. The county legislative authority may by resolution or ordinance require that notice of the lien be sent to each owner of property for which the assessment has not been paid by the date it was due and that each such lien created shall be collected by the treasurer in the same manner as delinquent real property tax, if within thirty days from the date the owner is sent notice of the lien, including the amount thereof, the lien remains unpaid and an appeal has not been made pursuant to RCW 17.10.180. Liens treated as delinquent taxes shall bear interest at the rate of twelve percent per annum and such interest shall accrue as of the date notice of the lien is sent to the owner: *Provided further*, That any collections for such lien shall not be considered as tax; or

(2) The county legislative authority may appropriate money from the county general fund necessary for the administration of the county noxious weed control program. In addition the county legislative authority may make emergency appropriations as it deems necessary for the implementation of this chapter.

(3) Forest lands used solely for the planting, growing, or harvesting of trees and which are typified, except during a single period of five years following clear-cut logging, by canopies so dense as to prohibit growth of an understory may be subject to an annual noxious weed assessment levied by a county legislative authority that shall not exceed one-tenth of the weighted average per acre noxious weed assessment levied on all other lands in unincorporated areas within the county that are subject to the weed assessment. This assessment shall be computed in accordance with the formula in subsection (4) of this section.

(4) The calculation of the "weighted average per acre noxious weed assessment" shall be a ratio expressed as follows: (a) The numerator shall be the total amount of funds estimated to be collected from the per acre assessment on all lands except (i) forest lands as identified in subsection (3) of this section, (ii) lands exempt from the noxious weed assessment, and (iii) lands located in an incorporated area. (b) The denominator shall be the total acreage from which funds in (a) of this subsection are collected. For lands of less than one acre in size, the denominator calculation may be based on the following assumptions: (i) Unimproved lands shall be calculated as being one-half acre in size on the average, and (ii) improved lands shall be calculated as being one-third acre in size on the average. The county legislative authority may choose to calculate the denominator for lands of less than one acre in size using other assumptions about average parcel size based on local information.

(5) For those counties that levy a per parcel assessment to help fund noxious weed control programs, the per parcel assessment on forest lands as defined in subsection (3) of this section shall not exceed one-tenth of the per parcel assessment on nonforest lands. [1987 c 438 § 31; 1975 1st ex.s. c 13 § 10; 1969 ex.s. c 113 § 24.]

***Reviser's note:** The original reference in this section to "section 35 of this act" appears to be erroneous. It has been changed to refer to section 37 of the act, codified as RCW 17.10.890, which relates to hearings.

17.10.250 Applications for noxious weed control funds. The legislative authority of any county with an activated noxious weed control board or the board of any weed district may apply to the director for noxious weed control funds. Any such applicant must employ adequate administrative personnel to supervise an effective weed control program as determined by the director with advice from the state noxious weed control board. The director with advice from the state noxious weed control board shall adopt rules on the distribution and use of noxious weed control account funds. [1987 c 438 § 32; 1975 1st ex.s. c 13 § 11; 1969 ex.s. c 113 § 25.]

17.10.260 Administrative powers to be exercised in conformity with administrative procedure act—Use of weed control substances subject to other acts. The administrative powers granted under this chapter to the director of the department of agriculture and to the state noxious weed control board shall be exercised in conformity with the provisions of the administrative procedure act, chapter 34.04 RCW, as now or hereafter amended. The use of any substance to control noxious weeds shall be subject to the provisions of the water pollution control act, chapter 90.48 RCW, as now or hereafter amended, the Washington pesticide control act, chapter 15.58 RCW, and the Washington pesticide application act, chapter 17.21 RCW. [1987 c 438 § 33; 1969 ex.s. c 113 § 28.]

17.10.270 Noxious weed control boards—Authority to obtain insurance or surety bonds. Each noxious weed control board may obtain such insurance or surety bonds, or both with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1987 c 438 § 34; 1974 ex.s. c 143 § 5.]

17.10.280 Lien for labor, material, equipment used in controlling noxious weeds. Every activated county noxious weed control board performing labor, furnishing material, or renting, leasing or otherwise supplying equipment, to be used in the control of noxious weeds, or in causing control of noxious weeds, upon any property pursuant to the provisions of chapter 17.10 RCW has a lien upon such property for the labor performed, material furnished, or equipment supplied whether performed, furnished, or supplied with the consent of the

owner, or his agent, of such property, or without the consent of said owner or agent. [1987 c 438 § 35; 1975 1st ex.s. c 13 § 13.]

17.10.290 Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien. Every county noxious weed control board furnishing labor, materials, or supplies or renting, leasing, or otherwise supplying equipment to be used in the control of noxious weeds upon any property pursuant to RCW 17.10.160 and 17.10.170 or pursuant to an order under RCW 17.10.210 as now or hereafter amended, shall give to the owner or reputed owner or his agent a notice in writing, within ninety days from the date of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, which notice shall cover the labor, material, supplies, or equipment furnished or leased, as well as all subsequent labor, materials, supplies, or equipment furnished or leased, stating in substance and effect that such county noxious weed control board is furnishing or has furnished labor, materials and supplies or equipment for use thereon, with the name of the county noxious weed control board ordering the same, and that a lien may be claimed for all materials and supplies or equipment furnished by such county noxious weed control board for use thereon, which notice shall be given by mailing the same by registered or certified mail in an envelope addressed to the owner at his place of residence or reputed residence. [1987 c 438 § 36; 1975 1st ex.s. c 13 § 14.]

17.10.300 Lien for labor, material, equipment used in controlling noxious weeds—Claim—Filing—Contents. No lien created by RCW 17.10.280 shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date of cessation of the performance of such labor, furnishing of materials, or the supplying of such equipment, a claim for such lien shall be filed for record as hereinafter provided, in the office of the county auditor of the county in which the property, or some part thereof to be affected thereby, is situated. Such claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the name of the county noxious weed control board which performed the labor, furnished the material, or supplied the equipment, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, or his agent, and if the owner is not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the county noxious weed control board, and be verified by the oath of the county noxious weed control board, to the effect that the affiant believes that claim to be just; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interest of third parties shall not be affected by such amendment. A claim or lien substantially in the

same form provided by RCW 60.04.060 and not in conflict with this section shall be sufficient. [1975 1st ex.s. c 13 § 15.]

17.10.310 Notice of infraction—Issuance—Refusal to identify self or respond to notice a misdemeanor. The county noxious weed control board may issue a notice of civil infraction if after investigation it has reasonable cause to believe an infraction has been committed. It shall be a misdemeanor for any person to refuse to identify himself or herself properly for the purpose of issuance of a notice of infraction. Any person wilfully violating a written and signed promise to respond to a notice of infraction shall be guilty of a misdemeanor regardless of the disposition of the notice of infraction. [1987 c 438 § 24.]

17.10.320 Notice of infraction—Response—Failure to respond—Assessment of penalty. (1) A person who receives a notice of infraction shall respond to the notice as provided for in this section within fifteen days of the date on the notice.

(2) Any employee or agent of an owner subject to this chapter may accept a notice of infraction on behalf of the owner. The county noxious weed control board shall also furnish a copy of the notice of infraction to the owner by certified mail within five days of issuance.

(3) If the person determined to have committed the infraction does not contest the determination, that person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction shall be submitted with the response. When a response that does not contest the determination is received, an appropriate order shall be entered into the court's record and a record of the response shall be furnished to the county noxious weed control board.

(4) If a person determined to have committed the infraction wishes to contest the determination, that person shall respond by completing the portion of the notice of the infraction requesting a hearing and submitting it either by mail or in person to the court specified in the notice. The court shall notify the person in writing of the time, place, and date of the hearing which shall not be sooner than fifteen days from the date on the notice, except by agreement.

(5) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it either by mail or in person to the court specified in the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(6) If a person issued a notice of infraction fails to respond to the notice of infraction or fails to appear at the hearing requested pursuant to this section, the court shall enter an appropriate order assessing the monetary

penalty prescribed in the schedule of penalties submitted to the court by the state noxious weed control board and shall notify the county noxious weed control board of the failure to respond to the notice of infraction or to appear at a requested hearing. [1987 c 438 § 25.]

17.10.330 Determination of infraction—Hearing—Appeal—Review. A hearing held for the purpose of contesting the determination that an infraction has been committed shall be held without jury. The court may consider the notice of infraction and any other written report submitted by the county noxious weed control board. The person named in the notice may subpoena witnesses and has the right to present evidence and examine witnesses present in court. The burden of proof is upon the county noxious weed control board to establish the commission of the infraction by preponderance of evidence.

After consideration of the evidence and argument, the court shall determine whether the infraction was committed. Where it is not established that the infraction was committed, an order dismissing the notice shall be entered in the court's record. If it is established that the infraction was committed, an appropriate order shall be entered in the court's record, a copy of which shall be furnished to the county noxious weed control board. Appeal from the court's determination or order shall be to the superior court and must be within ten days of the determination or order. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the rules of appellate procedure. [1987 c 438 § 26.]

17.10.340 Commission of infraction—Mitigating circumstances—Hearing. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person named in the notice may not subpoena witnesses. The determination that the infraction has been committed may not be contested at a hearing held for the purpose of explaining circumstances. After the court has heard the explanation of the circumstances surrounding the commission of the infraction, an appropriate order shall be entered in the court's record. A copy of the order shall be furnished to the county noxious weed control board. There may be no appeal from the court's determination or order. [1987 c 438 § 27.]

17.10.350 Infraction—Penalty. Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty. No monetary penalty so assessed may exceed one thousand dollars. The state noxious weed control board shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and shall submit the schedule to the appropriate court. If a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the

penalty must be paid. Failure to pay any monetary penalties imposed under this chapter shall be punishable as a misdemeanor. [1987 c 438 § 28.]

17.10.890 Deactivation of county noxious weed control board—Hearing. The following procedures shall be followed to deactivate a county noxious weed control board:

(1) The county legislative authority shall hold a hearing to determine whether there continues to be a need for an activated county noxious weed control board if:

(a) A petition is filed by one hundred registered voters within the county;

(b) A petition is filed by a county noxious weed control board as provided in RCW 17.10.240; or

(c) The county legislative authority passes a motion to hold such a hearing.

(2) Except as provided in subsection (4) of this section, the hearing shall be held within sixty days of final action taken under subsection (1) of this section.

(3) If, after hearing, the county legislative authority determines that no need exists for a county noxious weed control board, the county legislative authority shall deactivate the board.

(4) The county legislative authority shall not convene a hearing as provided for in subsection (1) of this section more frequently than once a year. [1987 c 438 § 37.]

17.10.900 Weed districts—Continuation—Dissolution. Any weed district formed under chapter 17.04 or 17.06 RCW prior to the enactment of this chapter, shall continue to operate under the provisions of the chapter under which it was formed: *Provided*, That if ten percent of the landowners subject to any such weed district, and the county noxious weed control board upon its own motion, petition the county legislative authority for a dissolution of the weed district, the county legislative authority shall provide for an election to be conducted in the same manner as required for the election of directors under the provisions of chapter 17.04 RCW, to determine by majority vote of those casting votes, if such weed district shall continue to operate under the act it was formed. The land area of any dissolved weed district shall forthwith become subject to the provisions of this chapter. [1987 c 438 § 38; 1975 1st ex.s. c 13 § 12; 1969 ex.s. c 113 § 26.]

17.10.905 Purpose—Construction—1975 1st ex.s. c 13. The purpose of this chapter is to limit economic loss due to the presence and spread of noxious weeds on or near agricultural land.

The intent of the legislature is that this chapter be liberally construed, and that the jurisdiction, powers, and duties granted to the county noxious weed control boards by this chapter are limited only by specific provisions of this chapter or other state and federal law. [1975 1st ex.s. c 13 § 17.]

17.10.910 Severability—1969 ex.s. c 113. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act,

or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 113 § 27.]

Chapter 17.12

AGRICULTURAL PEST DISTRICTS

Sections

17.12.010	Pest districts authorized.
17.12.020	Petition—Notice—Hearing.
17.12.030	Determination—Boundaries of district.
17.12.040	Designation of district.
17.12.050	Treasurer—Tax levies.
17.12.060	Supervision of the district.
17.12.080	Levies on state and county lands—Levies on state lands to be added to rental or purchase price.
17.12.100	Limit of indebtedness.

Rodents: Chapter 17.16 RCW.

17.12.010 Pest districts authorized. For the purpose of destroying or exterminating squirrels, prairie dogs, gophers, moles or other rodents, or of rabbits or any predatory animals that destroy or interfere with the crops, fruit trees, shrubs, valuable plants, fodder, seeds or other agricultural plants or products, thing or pest injurious to any agricultural plant or product, or to prevent the introduction, propagation, growth or increase in number of any of the above described animals, or rodents, the board of county commissioners of any county may create a pest district or pest districts within such county and may enlarge any district containing a lesser territory than the whole county, or reduce any district already created, or combine or consolidate districts or divide, or create new districts from time to time in the manner hereinafter set forth. [1919 c 152 § 1; RRS § 2801.]

17.12.020 Petition—Notice—Hearing. Whenever ten or more resident freeholders in any county petition the board of county commissioners, asking that their lands be included, either separately or with other lands designated in the petition in a district to be formed for the purpose of preventing, destroying, or exterminating any of the animals, rodents or other such things described in RCW 17.12.010, or that such lands be included within a district already formed by the enlargement of such district, or a new district or districts be formed out of a district or districts then in existence or out of territory partly in districts already formed and not included in any district, and such petition indicating the boundaries of such proposed district, whether all or any part of such county, and stating the purpose of such district, the board shall fix a time for the hearing of such petition and shall give at least thirty days notice of the time and place of such hearing by posting copies of such notice of the time and place of such hearing in three conspicuous places within the proposed district and posting one copy of such notice at the court house or place of business of the board, and also by mailing to each freeholder within the proposed district a copy of such notice, to his last known residence, if known, and if not known to the clerk of such board, then and in that event

the posting shall be deemed sufficient: *Provided, however,* If the board shall deem it impractical to mail notices to each freeholder, within the proposed district, or if the post office address of all the freeholders are not known, then in that event when recited in a resolution adopted by the board, the notice in addition to posting, shall be published once a week for three successive weeks in the county official paper if there is such, and if there be no official paper, then in some paper published in said county, and if there be no paper published in said county, then in some paper of general circulation within the proposed district. The persons in whose name the property is assessed shall be deemed the owners thereof for the purpose of notice as herein required: *Provided, however,* That for lands belonging to the state, the commissioner of public lands shall be notified, and for lands belonging to the county, the county auditor shall be notified, and if such lands are under lease or conditional sale the lessee or purchaser shall also be notified in the manner above provided. Any person interested may appear at the time of such hearing and may under such rules and regulations as the board may prescribe give his or her reasons for or objections to the creation of such a district. [1919 c 152 § 2; RRS § 2802.]

17.12.030 Determination—Boundaries of district. Upon the hearing of such petition the board shall determine whether such a district shall be created and shall fix the boundaries thereof, but shall not enlarge the boundaries of proposed districts or enlarge or change the boundary or boundaries of any district or districts already formed without first giving the notice to all parties interested as provided in RCW 17.12.020. [1919 c 152 § 3; RRS § 2803.]

17.12.040 Designation of district. If the board shall deem the interests of the county or of any particular section thereof will be benefited by the creation of such a district or districts, or the changing thereof, it shall make a record thereof upon the minutes of the board and shall designate such territory in each such district as "Pest District _____ for _____ County". [1919 c 152 § 4; RRS § 2804.]

17.12.050 Treasurer—Tax levies. The county treasurer shall be ex officio treasurer for each of such districts so formed and the county assessor and other county officers shall take notice of the formation of such district or districts and shall be governed thereby according to the provisions of this chapter. The assessment or the tax levies as hereinafter provided for shall be extended on the tax rolls against the property liable therefor the same as other assessments or taxes are extended, and shall become a part of the general tax against such property and be collected and accounted for the same as other taxes are, with the terms and penalties attached thereto. The moneys so collected shall be held and disbursed as a special fund for such district and shall be paid out only on warrant issued by the county auditor upon voucher approved by the board of county commissioners. [1919 c 152 § 5; RRS § 2805.]

17.12.060 Supervision of the district. The agricultural expert in counties having an agricultural expert, shall under the direction of Washington State University have general supervision of the methods and means of preventing, destroying or exterminating any animals or rodents as herein mentioned within his county, and of how the funds of any pest district shall be expended to best accomplish the purposes for which such funds were raised; in counties having no such agricultural expert each county commissioner shall be within his respective commissioner district, ex officio supervisor, or the board may designate some such person to so act, and shall fix his compensation therefor. Whenever any member of the board shall act as supervisor he shall be entitled to his actual expenses and his per diem as county commissioner the same as if he were doing other county business. [1977 ex.s. c 169 § 4; 1919 c 152 § 6; RRS § 2806.]

Reviser's note: The law authorizing the employment of agricultural experts was 1913 c 18 as amended by 1919 c 193 but since repealed by 1949 c 181 which authorizes cooperative extension work in agriculture and home economics. See RCW 36.50.010.

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

17.12.080 Levies on state and county lands—Levies on state lands to be added to rental or purchase price. Whenever there shall be included within any pest district lands belonging to the state or to the county the board of county commissioners shall determine the amount of the tax or assessment for which such land would be liable if the same were in private ownership for each subdivision of forty acres or fraction thereof. The assessor shall transmit to the county commissioners a statement of the amounts so due from county lands and the county commissioners shall appropriate from the current expense fund of the county sufficient money to pay such amounts. A statement of the amounts due from state lands within each county shall be annually forwarded to the commissioner of public lands who shall examine the same and if he finds the same correct and that the determination was made according to law, he shall certify the same and issue a warrant for the payment of same against any funds in the state treasury appropriated for such purposes.

The commissioner of public lands shall keep a record of the amounts so paid on account of any state lands which are under lease or contract of sale and such amounts shall be added to and become a part of the annual rental or purchase price of the land, and shall be paid annually at the time of payment of rent or payment of interest or purchase price of such land. When such amounts shall be collected by the commissioner of public lands it shall be paid into the general fund in the state treasury. [1973 c 106 § 11; 1919 c 152 § 8; RRS § 2808. Formerly RCW 17.12.080 and 17.12.090.]

17.12.100 Limit of indebtedness. No district shall be permitted to contract obligations in excess of the estimated revenues for the two years next succeeding the incoming [incurring] of such indebtedness and it shall be unlawful for the county commissioners to approve of any

bills which will exceed the revenue to any district which shall be estimated to be received by such district during the next two years. [1919 c 152 § 9; RRS § 2809.]

County budget as limitation on incurring liability: RCW 36.40.100.

Chapter 17.16 RODENTS

Sections

17.16.010	"Rodent" defined.
17.16.020	Washington State University to administer.
17.16.030	Washington State University to employ inspectors.
17.16.040	Powers and duties.
17.16.050	Cooperation with federal agency.
17.16.060	Duty of persons to destroy rodents.
17.16.070	Notice to destroy—University may destroy if owner fails to do so.
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17.16.100	Entry on tax rolls—Rotating fund.
17.16.110	Appeal.
17.16.130	Poisons to be labeled.

Agricultural pest districts: Chapter 17.12 RCW.

17.16.010 "Rodent" defined. The term "rodent" wherever used in RCW 17.16.010 through 17.16.130 shall be held and construed to mean and include ground squirrels, pocket gophers, rabbits, and such other rodents as the Washington State University shall designate as injurious to the agricultural interests of the state. [1921 c 140 § 1; RRS § 2788.]

17.16.020 Washington State University to administer. The administration of RCW 17.16.010 through 17.16.130 shall be under the supervision and control of the state of Washington by and through the extension service of the Washington State University, in cooperation with the board of county commissioners in the various counties of the state and the bureau of biological survey of the United States department of agriculture. [1919 c 140 § 3; RRS § 2790.]

17.16.030 Washington State University to employ inspectors. The Washington State University is hereby empowered and it shall be its duty to employ persons as it may deem necessary to inspect rodent conditions and to supervise the destruction and extermination of injurious rodents in such counties as shall cooperate with said Washington State University in such work. [1921 c 140 § 4; RRS § 2791.]

17.16.040 Powers and duties. The Washington State University shall be authorized and directed to supervise the extermination of rodents by any land owner, occupant, agent in charge, or lessee, to prepare poisons and baits for that purpose, and to enter upon any farm, rights-of-way, grounds, or premises for the purpose of ascertaining rodent conditions or for the purpose of exterminating the same as in RCW 17.16.010 through 17.16.130 provided. [1921 c 140 § 7; RRS § 2794.]

17.16.050 Cooperation with federal agency. The Washington State University is hereby authorized to cooperate with the bureau of biological survey of the United States department of agriculture, and to make such arrangements as it may deem advisable to join with said bureau in the employment of persons to inspect rodent conditions and to supervise the destruction and extermination of injurious rodents. [1921 c 140 § 5; RRS § 2792.]

17.16.060 Duty of persons to destroy rodents. It shall be the duty of every person, firm or corporation owning, possessing or having the care or charge of any land or lands in the state to destroy and exterminate any and all such rodents thereon. [1921 c 140 § 2; RRS § 2789.]

17.16.070 Notice to destroy—University may destroy if owner fails to do so. Whenever the person or persons designated and employed by the Washington State University for that purpose shall, upon inspection and investigation, determine that the owner, occupant, agent in charge, or lessee of any land has failed or neglected to exterminate the rodents on said land, and that such land is infested with such rodents, it shall notify said owner, occupant, agent in charge or lessee to that effect. Said notice shall describe the land involved, contain a finding that said land is infested with rodents, naming the kind, direct what steps shall be taken to exterminate said rodents, and inform the owner, occupant, agent in charge, or lessee that, unless such steps are begun within a period of ten days after service of said notice (exclusive of the day of service), said land will be entered upon and the rodents exterminated and the expense of such extermination will be charged as a tax against said land, and collected as general taxes are collected. A copy of said notice shall be served personally upon the owner, occupant, agent in charge or lessee if the same is found in the county in which such land is situated. If said owner, occupant, agent in charge, or lessee cannot with reasonable diligence be found in the county, a certificate to that effect, together with said notice, shall be mailed to the person appearing on the records of the county treasurer's office as last paying general taxes on said land, and a copy of said notice shall be posted in a conspicuous place on said land. After the expiration of ten days from the date of service, or mailing and posting, as the case may be, of said notice as herein provided, the Washington State University shall enter said land and exterminate the rodents thereon. [1921 c 140 § 8; RRS § 2795.]

Property taxes, collection of: Chapter 84.56 RCW.

17.16.080 Statement of expense—Notice of hearing. An itemized account shall be kept of the expenses of exterminating the rodents on said land and, upon the conclusion of such work, a sworn itemized statement of such expense, together with the description of the land and a return of the service, or mailing and posting, of the notice to the owner, occupant, agent in charge, or lessee shall be filed with the board of county commissioners of the county in which said land is situated. The

board shall thereupon fix a time and place when and where such statement of expense will be considered, and shall give notice of same. Said notice shall be signed by the clerk of the board, shall be served in the same manner, by the same agency, and shall be given for the same length of time and to the same parties as the notice provided for in RCW 17.16.070. [1921 c 140 § 9; RRS § 2796.]

17.16.090 Hearing—Expense to be taxed to land—Limitation. The board of county commissioners shall meet at the time and place fixed in said notice, and shall examine said statement of expenses, hear testimony if offered, and shall determine that said statement, or so much thereof as is just and correct, shall be established as a tax against the land involved. Said board shall also make an order that the total amount of such expenses so approved shall be a tax on the land on which said work was done after the expiration of ten days from the date of the entry of said order on the minutes of the board, unless sooner paid or unless an appeal be taken as provided in RCW 17.16.110 in which event the same shall become a tax at the time the amount charged shall be determined by the court: *Provided*, That in no case shall the total expense for the extermination of rodents for any one year charged against any tract of land exceed a sum which in the aggregate shall amount to more than twenty cents per acre or fraction thereof included in the tract. [1921 c 140 § 10; RRS § 2797.]

17.16.100 Entry on tax rolls—Rotating fund. The county treasurer shall enter the amount of such expense according to the order of the board, on the tax rolls against the land for the current year, and the same shall become a part of the general taxes for that year to be collected at the same time and with the same interest and penalties and when so collected the same shall be credited to the rotating fund herein provided for. [1921 c 140 § 11; RRS § 2798.]

17.16.110 Appeal. Any person feeling himself aggrieved at the decision and order of the board of county commissioners approving the amount of such expenses and establishing the same as a tax against the land involved may appeal therefrom to the superior court of the county, by serving a written notice of appeal on the board and by filing a copy of same with proof of service attached, together with a good and sufficient cost bond to be approved by the county clerk in the sum of two hundred dollars, said cost bond to run to the county and in all other respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice of appeal must be served and filed within ten days from the date of the decision and order of the board approving the amount of said expense and establishing the same as a tax against the land involved, and said appeal must be brought on for hearing upon a certified copy of the records in the matter without further pleadings, at the next term of court thereafter. An appeal from the judgment of the superior court in the matter may be taken to the supreme court or the court

of appeals of the state as in other cases on appeal. Upon the final conclusion of any appeal so taken, the county clerk shall certify to the county treasurer the result of such appeal. [1971 c 81 § 57; 1921 c 140 § 12; RRS § 2799.]

Appeals to supreme court: Rules of court: See Rules of Appellate Procedure, Volume 0.

17.16.130 Poisons to be labeled. All poisons and poisoned baits prepared and distributed under authority of the board of county commissioners shall be placed in containers plainly labeled to show the character and purpose of the contents thereof. [1950 ex.s. c 19 § 1; 1921 c 140 § 13; RRS § 2800.]

"Misbranded" as applicable to pesticides, devices or spray adjuvants: RCW 15.58.130.

Chapter 17.21

WASHINGTON PESTICIDE APPLICATION ACT

Sections

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17.21.010 Declaration of police power and purpose. The application and the control of the use of various pesticides is important and vital to the maintenance of a high level of public health and welfare both immediate and future, and is hereby declared to be affected with the public interest. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health and welfare of the people of the state. [1967 c 177 § 1; 1961 c 249 § 1.]

Washington pesticide control act: Chapter 15.58 RCW.

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

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, or any organized group of persons whether incorporated or not, and every officer, agent or employee thereof. This term shall import either the singular or plural as the case may be.

(4) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(5) "Pesticide" means, but is not limited to, (a) any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form

of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest, and (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant, and (c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used.

(6) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests or to destroy, control, repel or mitigate fungi, nematodes or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately therefrom.

(7) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate any fungi.

(8) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate rodents or any other vertebrate animal which the director may declare to be a pest.

(9) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel or mitigate any weed.

(10) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(11) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(12) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

(13) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(14) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(15) "Weed" means any plant which grows where not wanted.

(16) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(17) "Fungi" means all nonchlorophyll-bearing thallophtes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals.

(18) "Snails or slugs" include all harmful mollusks.

(19) "Nematode" means any of the nonsegmented roundworms harmful to plants.

(20) "Apparatus" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(21) "Restricted use pesticide" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including man, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(22) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(23) "Agricultural crop" means a food intended for human consumption, or a food for livestock the products of which are intended for human consumption, which food shall require cultural treatment of the land for its production.

(24) "Board" means the pesticide advisory board.

(25) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(26) "Agricultural commodity" means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

(27) "Certified applicator" means any individual who is licensed as a pesticide applicator, pesticide operator, public operator, private-commercial applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators, only.

(28) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by him or his employer, by a competent person acting under the

instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision.

(29) "EPA" means the United States environmental protection agency.

(30) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(31) "FIFRA" means the federal insecticide, fungicide and rodenticide act, as amended (61 Stat. 163, 7 U.S.C. Sec. 135).

(32) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of (a) any EPA restricted use pesticide; or (b) any restricted use pesticide restricted to use only by certified applicators by the director, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by him or his employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

(33) "Private-commercial applicator" means a certified applicator who uses or supervises the use of (a) any EPA restricted use pesticide or (b) any restricted use pesticide restricted to use only by certified applicators for purposes other than the production of any agricultural commodity on lands owned or rented by him or his employer.

(34) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director. [1979 c 92 § 1; 1971 ex.s. c 191 § 1; 1967 c 177 § 2; 1961 c 249 § 2.]

17.21.030 Mandatory, permissive rules—Director to administer and enforce chapter. The director shall administer and enforce the provisions of this chapter and rules adopted hereunder.

(1) The director shall adopt rules:

(a) Governing the application and use, or prohibiting the use, or possession for use, of any pesticide;

(b) Governing the time when, and the conditions under which restricted use pesticides shall or shall not be used in different areas, which areas may be prescribed by the director, in the state;

(c) Providing that any or all restricted use pesticides shall be purchased, possessed or used only under permit of the director and under the director's direct supervision in certain areas and/or under certain conditions or in certain quantities of concentrations; however, any person licensed to sell such pesticides may purchase and possess such pesticides without a permit;

(d) Providing that all permittees shall keep records as required of licensees under RCW 17.21.100;

(e) Fixing and collecting examination fees; and

(f) Establishing testing procedures, licensing classifications, and requirements for licenses and permits as provided by this chapter.

(2) The director may adopt any other rules necessary to carry out the purpose and provisions of this chapter. [1987 c 45 § 26; 1979 c 92 § 2; 1961 c 249 § 3.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

17.21.040 Rules subject to administrative procedure act. All rules adopted under the provisions of this chapter shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning the adoption of rules. [1961 c 249 § 4.]

17.21.050 Hearings for imposition of civil penalty and/or suspension, denial or revocation of licenses subject to administrative procedure act. All hearings for the imposition of a civil penalty and/or the suspension, denial or revocation of a license issued under the provisions of this chapter shall be subject to the provisions of chapter 34.04 RCW as enacted or hereafter amended, concerning contested cases. [1985 c 158 § 4; 1961 c 249 § 5.]

17.21.060 Subpoenas—Witness fees. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records anywhere in the state in any hearing affecting the authority or privilege granted by a license or permit issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW as enacted or hereafter amended. [1961 c 249 § 6.]

17.21.065 Classification of licenses. The director may classify licenses to be issued under the provisions of this chapter, such classifications may include but not be limited to pest control operators, ornamental sprayers, agricultural crop sprayers or right of way sprayers; separate classifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides. Each such classification shall be subject to separate testing procedures and requirements: *Provided*, That no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the director under the authority of this section, except as provided for in RCW 17.21.110. [1967 c 177 § 17.]

17.21.070 Pesticide applicator's license—Required—Application date—Fee. It shall be unlawful for any person to engage in the business of applying pesticides to the land of another without a pesticide applicator's license. Application for such a license shall be made on or before January 1st of each year. Such application shall be accompanied by a fee of one hundred dollars and in addition thereto a fee of ten dollars for

each apparatus, exclusive of one, used by the applicant in the application of pesticides: *Provided*, That the provisions of this section shall not apply to any person employed only to operate any apparatus used for the application of any pesticide, and in which such person has no financial interest or other control over such apparatus other than its day to day mechanical operation for the purpose of applying any pesticide. [1981 c 297 § 21; 1967 c 177 § 3; 1961 c 249 § 7.]

Severability—1981 c 297: See note following RCW 15.36.110.

17.21.080 Application for license—Form, contents. Application for a pesticide applicator's license provided for in RCW 17.21.070 shall be on a form prescribed by the director and shall include the following:

(1) The full name of the person applying for such license.

(2) If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or any other organized group of persons whether incorporated or not, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation or group.

(3) The principal business address of the applicant in the state and elsewhere.

(4) The name of a person whose domicile is in the state, and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.

(5) The model, make, horsepower, and size of any apparatus used by the applicant to apply pesticides.

(6) License classification or classifications the applicant is applying for.

(7) Any other necessary information prescribed by the director. [1967 c 177 § 4; 1961 c 249 § 8.]

17.21.090 Examination for applicator's license—Fee. The director shall not issue a pesticide applicator's license until the applicant, if he or she is the sole owner of the business, or if there is more than one owner, the person managing the business, has passed an examination to demonstrate to the director (1) knowledge of how to apply pesticides under the classifications he or she has applied for, manually or with the various apparatuses that he or she may have applied for a license to operate under the provisions of this chapter, and (2) knowledge of the nature and effect of pesticides he or she may apply manually or with such apparatuses under such classifications. The pesticide applicator's license shall expire on December 31 following issuance. The director shall charge an examination fee established by the director by rule when an examination is necessary before a license may be issued or when application for such license and examination is made at other than a regularly scheduled examination date as provided for by the director. [1987 c 45 § 27; 1986 c 203 § 7; 1971 ex.s. c 191 § 2; 1967 c 177 § 5; 1961 c 249 § 9.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Severability—1986 c 203: See note following RCW 15.04.100.

17.21.100 Licensees to keep records—Contents—Duration—Submission to director. Pesticide applicators licensed under the provisions of this chapter shall keep records on a form prescribed by the director which shall include the following:

(1) The name of the person for whom the pesticide was applied.

(2) The location of the land where the pesticide was applied.

(3) The year, month, day and time the pesticide was applied.

(4) The trade name and/or the common name of the pesticide which was applied.

(5) The direction and estimated velocity of the wind at the time the pesticide was applied: *Provided*, That this subsection does not apply to applications of baits in bait stations and pesticide applications within structures.

(6) Any other reasonable information required by the director.

(7) Such records shall be kept for a period of three years from the date of the application of the pesticide to which such records refer, and the director shall, upon request in writing, be furnished with a copy of such records forthwith by the licensee: *Provided*, That the director may require the submission of such records within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of such restricted use pesticide. [1987 c 45 § 28; 1971 ex.s. c 191 § 3; 1961 c 249 § 10.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

17.21.110 Operator's license—Required—Fee—Exception. It shall be unlawful for any person to act as an employee of a pesticide applicator and apply pesticides manually or as the operator directly in charge of any apparatus which is licensed or should be licensed under the provisions of this chapter for the application of any pesticide, without having obtained an operator's license from the director. Such an operator's license shall be in addition to any other license or permit required by law for the operation or use of any such apparatus. Any person applying for such an operator's license shall file an application on a form prescribed by the director on or before January 1st of each year. Such application shall state the classifications the applicant is applying for and whether the applicant intends to apply pesticides manually or to operate either a ground or aerial apparatus, or both, for the application of pesticides. Application for a license to apply pesticides manually and/or to operate ground apparatuses shall be accompanied by a license fee of twenty dollars. Application for a license to operate an aerial apparatus shall be accompanied by a license fee of twenty dollars. The provisions of this section shall not apply to any individual who has passed the examination provided for in RCW 17.21.090, and is a licensed pesticide applicator. [1981 c 297 § 22; 1967 c 177 § 6; 1961 c 249 § 11.]

Severability—1981 c 297: See note following RCW 15.36.110.

17.21.120 Examination for operator's license—Fee. The director shall not issue an operator's license before such applicant has passed an examination to demonstrate to the director (1) the ability to apply pesticides in the classifications the applicant has applied for, manually or with the various apparatuses that he or she may have applied for a license to operate, and (2) knowledge of the nature and effect of pesticides applied manually or used in such apparatuses under such classifications. The operator's license shall expire on December 31 following issuance. The director shall charge an examination fee established by the director by rule when an examination is necessary before a license may be issued and when application for such license and examination is made at other than a regularly scheduled examination date as provided for by the director. [1987 c 45 § 29; 1986 c 203 § 8; 1967 c 177 § 7; 1961 c 249 § 12.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Severability—1986 c 203: See note following RCW 15.04.100.

17.21.122 Private-commercial applicator's license—Required—Application—Fee—Duration of license. It shall be unlawful for any person to act as a private-commercial applicator without having obtained a private-commercial applicator's license from the director. Any person applying for such private-commercial applicator's license shall file an application on a form prescribed by the director. Such application shall state the classifications the applicant is applying for and the method in which these pesticides are to be applied. Application for a license to apply pesticides shall be accompanied by a license fee of twenty dollars before a license may be issued. The private-commercial applicator license issued by the director shall be valid until revoked or until the director determines that recertification is necessary. [1979 c 92 § 6.]

17.21.124 Private-commercial applicator's license—Examination. The director shall not issue a private-commercial applicator's license before such applicant has passed an examination to demonstrate to the director (1) his ability to apply pesticides in the classifications he has applied for, (2) his knowledge of the nature and effect of pesticides applied under such classifications, and (3) any other matter the director, by regulation, determines to be a necessary subject for examination. [1979 c 92 § 7.]

17.21.126 Private applicators—Certification requirements and standards—Duration of certification. It shall be unlawful for any person to act as a private applicator without first complying with the certification requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use shall be

relative to hazards according to RCW 17.21.030 as now or hereafter amended. In determining these standards the director shall take into consideration standards of the EPA and is authorized to adopt by regulation these standards. A private applicator certification issued by the director shall be valid until revoked or the director determines that a recertification is necessary. If the director does not qualify the private applicator under this section, he shall inform the applicant in writing. [1979 c 92 § 8.]

17.21.128 Renewal of certificate or license. The director may renew any certification or license issued under authority of this chapter under the classification for which such applicant is licensed or certificated subject to recertification standards as determined by the director or examination regarding new knowledge that may be required to apply pesticides. [1986 c 203 § 9; 1979 c 92 § 9.]

Severability—1986 c 203: See note following RCW 15.04.100.

17.21.129 Demonstration and research applicator's license—Required—Examination—Fee—Duration of license. Except as provided in RCW 17.21.203(1), it is unlawful for a person to use or supervise the use of any pesticide which is restricted to use by certified applicators, on small experimental plots for research purposes when no charge is made for the pesticide and its application, without a demonstration and research applicator's license.

Demonstration and research applicators shall be subject to the record-keeping requirements of RCW 17.21.100. The director shall not issue a demonstration and research license until the applicant has passed an examination to demonstrate (1) the applicant's ability to apply pesticides in the classifications the applicant has applied for, and (2) the applicant's knowledge of the nature and effect of pesticides applied manually or used in such apparatuses under such classifications. A license fee of twenty dollars shall be paid before a demonstration and research license may be issued. The director shall charge an examination fee established by the director by rule for each examination administered on other than a regularly scheduled examination date. The demonstration and research applicator's license shall be valid until revoked or until the director determines that recertification is necessary. [1987 c 45 § 30; 1981 c 297 § 26.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

Severability—1981 c 297: See note following RCW 15.36.110.

17.21.130 Revocation or suspension of licenses. Any license provided for in this chapter may be revoked or suspended by the director for cause. [1986 c 203 § 10; 1961 c 249 § 13.]

Severability—1986 c 203: See note following RCW 15.04.100.

17.21.140 Penalty for delinquent renewals. If the application for renewal of any license provided for in this chapter is not filed prior to January 1st in any year, a penalty of twenty-five percent shall be assessed and

added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not acted as a pesticide applicator or operator subsequent to the expiration of his license. [1961 c 249 § 14.]

17.21.150 Grounds for denial, suspension, revocation of license. The director may deny, suspend, or revoke a license provided for in this chapter if he determines that an applicant or licensee has committed any of the following acts, each of which is declared to be a violation of this chapter:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Applied worthless or improper materials;

(3) Operated a faulty or unsafe apparatus;

(4) Operated in a faulty, careless, or negligent manner;

(5) Refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the director;

(6) Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required;

(7) Made false or fraudulent records, invoices, or reports;

(8) Engaged in the business of applying a pesticide without having a licensed applicator or operator in direct "on-the-job" supervision;

(9) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus;

(10) Used fraud or misrepresentation in making an application for a license or renewal of a license;

(11) Is not qualified to perform the type of pest control under the conditions and in the locality in which he operates or has operated, regardless of whether or not he has previously passed an examination provided for in RCW 17.21.090 and 17.21.120;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(13) Made false, misleading or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land; or

(14) Impersonated any state, county or city inspector or official. [1971 ex.s. c 191 § 4; 1967 c 177 § 8; 1961 c 249 § 15.]

17.21.160 Surety bond or insurance required of pesticide applicator licensee. The director shall not issue a pesticide applicator's license until the applicant has furnished evidence of financial responsibility with the director consisting either of a surety bond; or a liability insurance policy or certification thereof, protecting persons who may suffer legal damages as a result of the operations of the applicant: *Provided*, That such surety

bond or liability insurance policy need not apply to damages or injury to agricultural crops, plants or land being worked upon by the applicant. The director shall not accept a surety bond or liability insurance policy except from authorized insurers in this state or if placed as a surplus line as provided for in chapter 48.15 RCW, as enacted or hereafter amended. [1967 c 177 § 9; 1961 c 249 § 16.]

17.21.170 Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer. The amount of the surety bond or liability insurance as provided for in RCW 17.21.160 shall be not less than fifty thousand dollars for property damage and public liability insurance, each separately, and including loss or damage arising out of the actual use of any pesticide. The surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period. The director shall be notified ten days before any reduction at the request of the applicant or cancellation of the surety bond or liability insurance by the surety or insurer. The total and aggregate of the surety and insurer for all claims is limited to the face of the bond or liability insurance policy. The director may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding five thousand dollars for all applicators for the total amount of liability insurance or surety bond required by this section, but if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause shall not be accepted by the director unless the applicant furnishes the director with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides. [1983 c 95 § 7; 1967 c 177 § 10; 1963 c 107 § 1; 1961 c 249 § 17.]

17.21.180 Suspension of license when bond or insurance reduced below minimum requirement. The applicator's license shall, whenever the licensee's surety bond or insurance policy is reduced below the requirements of RCW 17.21.170, be automatically suspended until such licensee's surety bond or insurance policy again meets the requirements of RCW 17.21.170: *Provided*, That the director may pick up such licensee's license plates during such period of automatic suspension and return them only at such time as the said licensee has furnished the director with written proof that he or she is in compliance with the provisions of RCW 17.21.170. [1987 c 45 § 31; 1967 c 177 § 11; 1961 c 249 § 18.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

17.21.190 Damaged person must file report of loss—Contents—Time for filing—Effect of failure to file. Any person suffering loss or damage resulting from the use or application by others of any pesticide must file with the director a verified report of loss setting forth, so far as known to the claimant, the following:

- (1) The name and address of the claimant.
- (2) The type, kind, property alleged to be injured or damaged.
- (3) The name of the person applying the pesticide and allegedly responsible.
- (4) The name of the owner or occupant of the property for whom such application of the pesticide was made.

The report must be filed within sixty days from the time that the loss or damage becomes known to the claimant. If a growing crop is alleged to have been damaged, the report must be filed prior to harvest of fifty percent of that crop, unless the loss or damage was not then known.

The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action.

The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by a pesticide applicator or operator, the director may refuse to hold a hearing for the denial, suspension, or revocation of such pesticide applicator's or operator's license until such report is filed. [1961 c 249 § 19.]

17.21.200 Forest landowner or employees, farmer, exemption from pesticide applicator licensing. The provisions of this chapter relating to pesticide applicator licenses and requirements for their issuance shall not apply to any forest landowner, or his employees, applying pesticides with ground apparatus or manually, on his own lands or any lands or rights of way under his control or to any farmer owner of ground apparatus applying pesticides for himself or other farmers on an occasional basis not amounting to a principal or regular occupation: *Provided*, That such owner shall not publicly hold himself out as a pesticide applicator. [1979 c 92 § 3; 1971 ex.s. c 191 § 5; 1967 c 177 § 12; 1961 c 249 § 20.]

17.21.203 Government research personnel, persons engaged in research projects, exemption from licensing—Exceptions. (1) The licensing provisions of this chapter shall not apply to research personnel of federal, state, county, or municipal agencies when performing pesticide research in their official capacities: *Provided*, That when such persons are applying pesticides restricted to use by certified applicators, they shall be licensed as public operators.

(2) The licensing provisions of this chapter shall not apply to any other person when applying pesticides to small experimental plots for research purposes when no charge is made for the pesticide and its application: *Provided*, That if such persons are not provided for in subsection (1) of this section and are applying pesticides restricted to use by certified applicators, they shall be required to be licensed as demonstration and research applicators in accordance with RCW 17.21.129, but

shall be exempt from the requirements of RCW 17.21-.160, 17.21.170, and 17.21.180. [1981 c 297 § 23; 1979 c 92 § 4; 1971 ex.s. c 191 § 9.]

Severability—1981 c 297: See note following RCW 15.36.110.

17.21.205 Landscape gardener exemption from licensing. The licensing provisions of chapter 17.21 RCW shall not apply to any person using hand-powered equipment, devices, or contrivances to apply pesticides which are not restricted to use by certified applicators to lawns, or to ornamental shrubs and trees not in excess of twelve feet high, as an incidental part of his business of taking care of household lawns and yards for remuneration: *Provided*, That such person shall not publicly hold himself out as being in the business of applying pesticides. [1979 c 92 § 5; 1971 ex.s. c 191 § 6; 1967 c 177 § 18.]

17.21.220 Application of chapter to governmental entities—Public operator's license—Liability. (1) All state agencies, municipal corporations, and public utilities or any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application of pesticides: *Provided*, That the operators applying any pesticide restricted to use by certified applicators or in charge of any apparatuses used by any state agencies, municipal corporations and public utilities or any governmental agencies shall be subject to the provisions of RCW 17.21.100, 17.21.110 and 17.21.120: *Provided further*, That the director shall issue a limited public operator license without a fee to such operators which shall be valid only when such operators are acting as employees of a state agency, municipal corporation, public utility, or other government agency: *And provided further*, That the jurisdictional health officer or his duly authorized representative is exempt from this licensing provision when applying pesticides not restricted to use by certified applicators to control pests other than weeds. Public operator licenses shall expire on the fifth December 31 from the date of issuance. All public operator licenses valid on December 31, 1985, shall expire on December 31, 1990.

(2) Such agencies, municipal corporations and public utilities shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred. [1986 c 203 § 11; 1981 c 297 § 24; 1971 ex.s. c 191 § 7; 1967 c 177 § 13; 1961 c 249 § 22.]

Severability—1986 c 203: See note following RCW 15.04.100.

Severability—1981 c 297: See note following RCW 15.36.110.

17.21.230 Agricultural pesticide advisory board—Composition, terms. There is hereby created a pesticide advisory board consisting of three licensed pesticide applicators residing in the state (one shall be licensed to operate ground apparatus, one shall be licensed to operate aerial apparatus, and one shall be licensed for structural pest control), one licensed pest control consultant, one licensed pesticide dealer manager, one entomologist

in public service, one toxicologist in public service, one plant pathologist in public service, one member from the agricultural chemical industry, one member from the food processing industry, and two producers of agricultural crops or products on which pesticides are applied or which may be affected by the application of pesticides. Such members shall be appointed by the governor for terms of four years and may be appointed for successive four year terms at the discretion of the governor. The governor may remove any member of the board prior to the expiration of his term of appointment for cause. The board shall also include the director of the department of labor and industries or his duly authorized representative, the environmental health specialist from the division of health of the department of social and health services, the supervisor of the grain and chemical division of the department, and the directors, or their appointed representatives, of the *departments of game, fisheries, natural resources, and ecology. [1974 ex.s. c 20 § 1; 1971 ex.s. c 191 § 8; 1967 c 177 § 14; 1961 c 249 § 23.]

*Reviser's note: References to the "department of game" mean "department of wildlife." See note following RCW 77.04.020.

17.21.240 Agricultural pesticide advisory board—Vacancies. Upon the death, resignation or removal for cause of any member of the board, the governor shall fill such vacancy, within thirty days of its creation, for the remainder of its term in the manner herein prescribed for appointment to the board. [1961 c 249 § 24.]

17.21.250 Agricultural pesticide advisory board—General powers and duties. The board shall advise the director on any or all problems relating to the use and application of pesticides in the state. [1961 c 249 § 25.]

17.21.260 Agricultural pesticide advisory board—Officers, meetings. The board shall elect one of its members chairman. The members of the board shall meet at such time and at such place as shall be specified by the call of the director, chairman or a majority of the board. [1961 c 249 § 26.]

17.21.270 Agricultural pesticide advisory board—Board to receive travel expenses. No person appointed to the board shall receive a salary or other compensation as a member of the board: *Provided*, That each member of the board shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day spent in actual attendance at or traveling to and from meetings of the board or special assignments for the board. [1975-'76 2nd ex.s. c 34 § 24; 1961 c 249 § 27.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

17.21.280 Moneys collected solely for enforcement of chapter—Collections under prior law—Remittance of district court fees, fines, penalties and forfeitures. All moneys collected under the provisions of this chapter shall be paid to the director for use exclusively in the

enforcement of this chapter. All moneys held by the director for the enforcement of *chapter 17.20 RCW shall be retained by the director for the enforcement of this chapter: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 183; 1969 ex.s. c 199 § 15; 1961 c 249 § 28.]

*Reviser's note: Chapter 17.20 RCW was repealed by 1961 c 249 § 36.

Intent—1987 c 202: See note following RCW 2.04.190.

17.21.290 License plates for apparatuses—Statement of classification to appear on apparatus. All licensed apparatuses shall be identified by a license plate furnished by the director, at no cost to the licensee, which plate shall be affixed in a location and manner upon such apparatus as prescribed by the director. The licensee shall also place on two sides of each licensed apparatus so as to be readily visible to the public, letters not less than one inch high stating the classification or classifications for which such licensee is licensed. [1967 c 177 § 15; 1961 c 249 § 29.]

17.21.300 Agreements with other governmental entities. The director is authorized to cooperate with and enter into agreements with any other agency of the state, the United States, and any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulation. [1961 c 249 § 30.]

17.21.305 Licensing by cities of first class and counties. The provisions of this chapter requiring all structural pest control operators, exterminators and fumigators to license with the department shall not preclude a city of the first class with a population of one hundred thousand people or more, or the county in which it is situated, from also licensing structural pest control operators, exterminators and fumigators operating within the territorial confines of said city or county: *Provided*, That when structural pest control operators, exterminators and fumigators are licensed by both the city of the first class and the county in which the city is situated, and there exists a joint county-city health department, then the joint county-city health department may enforce the provisions of the city and county as to the license requirements for the structural pest control operators, exterminators and fumigators. [1986 c 203 § 12; 1967 c 177 § 19.]

Severability—1986 c 203: See note following RCW 15.04.100.

17.21.310 General penalty. Any person who shall violate any provisions or requirements of this chapter or rules adopted hereunder shall be deemed guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent offense: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1967 c 177 § 16; 1961 c 249 § 34.]

17.21.315 Civil penalty for failure to comply with chapter—Amount—Procuring, aiding, or abetting violation. Every person who fails to comply with this chapter or the rules 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 and every such violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty herein provided. [1985 c 158 § 3.]

17.21.320 Access to public or private premises—Search warrant, when—Prosecuting attorney's duties—Injunctions, when. (1) For purpose of carrying out the provisions of this chapter the director may enter upon any public or private premises at reasonable times, in order:

(a) To have access for the purpose of inspecting any equipment subject to this chapter and such premises on which such equipment is kept or stored;

(b) To inspect lands actually or reported to be exposed to pesticides;

(c) To inspect storage or disposal areas;

(d) To inspect or investigate complaints of injury to humans or land; or

(e) To sample pesticides being applied or to be applied.

(2) Should the director be denied access to any land where such access was sought for the purposes set forth in this chapter, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application, issue the search warrant for the purposes requested.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(4) The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in the superior court of the county in which such violation occurs or is about to occur. [1971 ex.s. c 191 § 10.]

17.21.900 Preexisting liabilities not affected. The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this act becomes effective. [1961 c 249 § 31.]

17.21.910 Prior licenses continued in force—Costs. Any license issued under the provisions of *chapter 17.20 RCW and in effect on the **effective date of this act, shall continue in full force and effect until its expiration date as if it had been issued under the requirements of RCW 17.21.090 and satisfied all requirements for obtaining such license, unless revoked prior thereto for cause by the director subsequent to a hearing.

The director shall prorate the cost of any license provided for in this chapter for the license period beginning with the **effective date of this act and ending December 31, 1961. [1961 c 249 § 32.]

Reviser's note: *(1) Chapter 17.20 RCW was repealed by 1961 c 249 § 36.

***(2) The "effective date of this act" was midnight June 7, 1961, see preface 1961 session laws.

17.21.920 Short title. This chapter may be cited as the Washington pesticide application act. [1961 c 249 § 33.]

17.21.930 Severability—1961 c 249. 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. [1961 c 249 § 35.]

17.21.931 Severability—1967 c 177. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1967 c 177 § 20.]

17.21.932 Severability—1979 c 92. If any provision of this 1979 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. [1979 c 92 § 10.]

Chapter 17.24

INSECT PESTS AND PLANT DISEASES

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Horticultural pests and diseases: Chapter 15.08 RCW.

17.24.005 Definitions. (1) "Plant pest" means, but is not limited to, any living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal,

bacteria, fungus, other parasitic plant, weed, or reproductive part thereof, virus or any organism similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or part thereof, or any processed, manufactured, or other products of plants.

(2) "Nuisance" means any plant, or part thereof, or property found in any commercial area upon which is found any pest or disease that is a source of infestation of other properties.

(3) "Commercial area" means a district where any horticultural product is being produced to the extent that a producer is dependent thereon, in whole or in part, for his livelihood.

(4) "Infect" and its derivatives "infected," "infecting," and "infection," means affected by or infested with pests or diseases as above defined.

(5) "Disinfect" and its derivatives means the control, cure or eradication of such pests or diseases by cutting or destroying infected parts or the application of effective pesticides. [1981 c 296 § 36.]

Severability—1981 c 296: See note following RCW 15.04.020.

PEST AND DISEASE CONTROL—1927 ACT

17.24.030 Power to adopt quarantine measures—**Rules and regulations**—**Public hearing.** The director of agriculture may after investigation establish, maintain and enforce such obligatory quarantine regulations as may be deemed necessary to protect the forest, agricultural, horticultural, ornamental and floral trees, shrubs and plants, and the products thereof in the state of Washington, from contagion or infestation from injurious plant disease, insect, or animal or weed pest, by establishing such quarantine at the boundaries of this state or elsewhere within the state, and he may make and enforce, any and all such obligatory rules and regulations as may be deemed necessary to prevent any infected or infested forest, agricultural, horticultural, ornamental and floral trees, shrubs, and plants, or any nonhorticultural article which may harbor such plant disease, insect, or animal or weed pests from passing over any quarantine line established and proclaimed pursuant to chapter 17.24 RCW, as now or hereafter amended, and all such articles may, during the maintenance of such quarantine, be inspected by such director or by horticultural or other inspectors thereto appointed, and he and the inspectors so conducting such inspection may prevent any such article from passing over such quarantine boundary or may require any such article passing over such quarantine boundary to be accompanied by a certificate of inspection, signed by such director or in his name by such inspector who has made such inspection. The director shall, when adopting rules or regulations under the provisions of this chapter, hold a public hearing and satisfy all the requirements of chapter 34.04 RCW, the Administrative Procedure Act, as now or hereafter amended, concerning the adoption of rules and regulations. [1981 c 296 § 24; 1927 c 292 § 2; RRS § 2781. Prior: 1921 c 105 § 2. FORMER PART

OF SECTION: 1947 c 156 § 1; Rem. Supp. 1947 § 2809-1, now codified in RCW 17.24.105. Formerly RCW 17.24.030 and 17.24.040, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

Purpose—1927 c 292: "The forest, agricultural, horticultural, ornamental and floral trees, shrubs, and plants in the state of Washington, and the products thereof shall be preserved and protected from the ravages of diseases, insects, and animal and weed pests injurious thereto and destructive thereof." [1927 c 292 § 1.] This applies to RCW 17.24.020 through 17.24.100.

Construction—1927 c 292: "This act shall not be construed as repealing or limiting any of the provisions of existing laws relating to the establishment and enforcement of quarantines within the state, but shall be deemed to be supplemental thereto." [1927 c 292 § 8.] This applies to RCW 17.24.020 through 17.24.100.

Horticultural plants and facilities—Inspection and licensing: Chapter 15.13 RCW.

Standards, grades and packs: Chapter 15.17 RCW.

17.24.035 Director's duty to inspect for pests and disease. Upon information received by the director of agriculture of the existence of any infectious plant disease, insect or other animal or weed pest, dangerous to any plant or commodity or to the interests of the plant industry of this state, or that there is a probability of the introduction of any such infectious plant disease, insect or other animal or weed pest into this state or across the boundaries thereof, he may proceed to thoroughly investigate same and may establish, maintain and enforce quarantine as hereinbefore provided, and may make and enforce such regulations as are in his opinion, necessary to circumscribe and exterminate such infectious plant diseases, insect or other animal or weed pest and prevent the spread thereof. Such director may disinfect, or take such other action with reference to any tree, shrub, plant, vine, cutting, graft, scion, bud, fruit-pit, fruit, seed, vegetable or any crop or crop product, and any nonhorticultural article infested or infected with, or which, in his opinion may have been exposed to infection or infestation by, any such infectious plant disease, insect or other animal or weed pest, as in his discretion shall seem necessary to carry out and give effect to the provisions of chapter 17.24 RCW, as now or hereafter amended. Such director, his deputies and inspectors are hereby authorized to enter upon any ground or premises to inspect the same or to inspect any tree, shrub, plant, vine, cutting, graft, scion, bud, fruit-pit, fruit, seed, vegetable, or other article of horticulture or any nonhorticultural article which may harbor such plant disease, insect, or animal or weed pest, and to do all acts and things necessary to carry out the provisions of chapter 17.24 RCW, as now or hereafter amended, with the least possible injury to property and business. [1981 c 296 § 25; 1927 c 292 § 3; RRS § 2782. Prior: 1921 c 105 § 3. Formerly RCW 17.24.020, 17.24.040, part, and 17.24.050.]

Severability—1981 c 296: See note following RCW 15.04.020.

17.24.060 Marking containers of imported products. Each carload, case, box, package, crate, bale or bundle of trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit pits, or fruit or vegetables or seed, imported or brought into this state, shall have plainly and legibly

marked thereon in a conspicuous manner and place the name and address of the shipper, owner or owners or person forwarding or shipping the same, and also the name of the person, firm, or corporation to whom the same is forwarded or shipped, or his or its responsible agents, also the name of the country, state or territory where the contents were grown, and a statement of the contents therein. [1927 c 292 § 4; RRS § 2783. Prior: 1921 c 105 § 4.]

17.24.070 Infected products in transit in sealed containers. When any shipment of nursery stock, trees, vines, plants, shrubs, cuttings, grafts, scions, fruit, fruit pits, vegetables, or seed, or any other horticultural or agricultural products passing through any portion of the state of Washington in transit, is infested or infected with any species of injurious insects, their eggs, larvae, pupae or animal or plant disease, or weed pest, which would cause damage, or be liable to cause damage to the forests, orchards, vineyards, gardens, or farms of the state of Washington, or which would be, or liable to be, detrimental thereto or to any portion of said state, or to any of the forests, orchards, vineyards, gardens or farms within said state, and there exists danger of dissemination of such insects or disease or weed pest while such shipment is in transit in the state of Washington, then such shipment shall be placed within sealed containers, composed of metallic or other material, so that the same cannot be broken or opened, or be liable to be broken, or opened, so as to permit any of the said shipment, insects, their eggs, larvae, or pupae or animal or plant disease to escape from such sealed containers and the said containers shall not be opened while within the state of Washington. [1927 c 292 § 5; RRS § 2784. Prior: 1921 c 105 § 5.]

17.24.080 Inspection of imported products—Notice to inspector—Holding for inspection. Whenever the director of agriculture declares, promulgates and issues quarantine measures, orders or regulations against any part or portion of this state or any other state or country or section thereof, for the protection of any forest, agricultural, horticultural, ornamental or floral trees, shrubs, or plants, and there shall be received in this state, any forest, agricultural, horticultural, ornamental or floral trees, shrubs, or plants, or the raw products thereof, from any part or portion of this state, or any other state or country or section thereof, against which the quarantine has been issued as to such commodity, it shall be the duty of the person, or the official of the carrier having such shipment in charge for delivery, unless the same is accompanied by a certificate of inspection and approval by a horticultural inspector of this state, showing that the same was inspected and approved at the initial point of shipment, to notify the horticultural inspector stationed nearest to the point where said shipment is received, of the receipt of such shipment giving the name of the consignor and consignee and stating that such shipment is ready for inspection and delivery. Said notification shall be either by telephone or telegraph, and confirmed by written notice delivered

personally to said inspector or to some person of suitable age and discretion at his residence or office, or by mail addressed to said inspector at his place of residence or at his office; and it shall be unlawful for any such agent or person having such shipment in charge to deliver the same to the consignee or to any other person until the same shall have been inspected by a horticultural inspector: *Provided, however,* That such agent shall not be required to hold such shipment more than forty-eight hours after notifying the inspector as aforesaid, except in case the notice is given by mail, in which event, such shipment shall be held for such period beyond said forty-eight hours as is ordinarily required for delivery of mail to the address of the inspector. Upon the delivery to the consignee of a shipment accompanied by a certificate of inspection as aforesaid, the agent or person making the delivery shall retain the certificate of inspection showing his authority for releasing the same. [1927 c 292 § 6; RRS § 2785. Prior: 1921 c 105 § 6, part. Formerly RCW 17.24.080 and 17.24.090.]

17.24.100 Penalties—Second and subsequent offenses. Every person who shall violate or fail to comply with any rule or regulation adopted and promulgated by the director of agriculture in accordance with and under the provision of chapter 17.24 RCW, as now or hereafter amended, shall be guilty of a misdemeanor, and for a second and each subsequent violation or failure to comply with the provisions of this chapter or rule or regulation adopted hereunder, shall be guilty of a gross misdemeanor. [1981 c 296 § 26; 1927 c 292 § 7; RRS § 2786. Prior: 1921 c 105 § 7.]

Severability—1981 c 296: See note following RCW 15.04.020.

PEST AND DISEASE CONTROL—1947 ACT

17.24.105 Authority to apply quarantine control methods. The director of agriculture of the state of Washington is authorized and empowered to apply such quarantine control methods as may be necessary to prevent the introduction of insect pests or plant diseases, including virus diseases that may become a public nuisance or endanger the agricultural or horticultural industries of the state of Washington, and to apply such methods as may be necessary for quarantine, and/or eradication, and/or control of insect pests or plant diseases that are now established or later become established in the state of Washington that may endanger the agricultural or horticultural industries of the state of Washington. [1981 c 296 § 27; 1947 c 156 § 1; Rem. Supp. 1947 § 2809-1. Prior: 1945 c 9 § 1; 1941 c 11 § 1. Formerly RCW 17.24.030, part.]

Severability—1981 c 296: See note following RCW 15.04.020.

17.24.110 Director's cooperation with other agencies. The director of agriculture is authorized to cooperate with any individual, group of citizens, municipalities and counties of the state of Washington, Washington State University or any of its experiment stations, and/or with the secretary of agriculture of the United States and

such agencies as the secretary may designate, and/or with any other state or states, agency or group the director of agriculture may designate, to carry out the provisions of chapter 17.24 RCW, as now or hereafter amended. [1981 c 296 § 28; 1977 ex.s. c 169 § 5; 1947 c 156 § 2; Rem. Supp. 1947 § 2809-2. Prior: 1945 c 9 § 2.]

Severability—1981 c 296: See note following RCW 15.04.020.

Severability—**Nomenclature**—**Savings**—1977 ex.s. c 169: See notes following RCW 28B.10.016.

17.24.120 Acquisition of lands, water supplies, and other property, for quarantine farms. The director of agriculture shall have the power and authority to acquire in fee or in trust, by gift, or, whenever funds are appropriated for such purpose, by purchase, easement, lease or condemnation, such lands or other property, water supplies, and rights of way therefor, and the maintenance of same, as may be deemed necessary for the use of the department of agriculture in establishing quarantine stations, and/or farms for the purpose of the prevention, eradication, elimination and control of insect pests or plant diseases that infect the agricultural or horticultural products of the state of Washington. [1947 c 156 § 3; Rem. Supp. 1947 § 2809-3. Prior: 1945 c 9 § 3.]

17.24.130 Fees for services. The director of agriculture is authorized to enter into agreements with individuals, associations and companies for the purpose of certifying nursery stock grown under the rules and regulations promulgated by the director of agriculture and, from time to time, to fix, change and adjust fees for such services rendered, and any agricultural and horticultural commodities incidentally produced in any operation hereunder and sold, said fees to be deposited with the state treasurer to the credit of the general fund. All actions of the director of agriculture and/or the department of agriculture in accepting deeds from any individual or group of individuals for any of the purposes heretofore specifically enumerated are, from the date of the acceptance of such deed, hereby ratified and validated. [1947 c 156 § 4; Rem. Supp. 1947 § 2809-4. Prior: 1945 c 9 § 4.]

17.24.140 Funds for technical and scientific services. The director of agriculture of the state of Washington, may, in his discretion, provide funds for technical or scientific services, labor, materials and supplies for the purposes specified in chapter 17.24 RCW, as now or hereafter amended. [1981 c 296 § 29; 1947 c 156 § 5; Rem. Supp. 1947 § 2809-5. Prior: 1945 c 9 § 5.]

Severability—1981 c 296: See note following RCW 15.04.020.

PEST AND DISEASE CONTROL—1982 ACT

17.24.200 Determination of imminent danger of infestation of plant pests or plant diseases—Emergency measures—Conditions—Procedure. (1) If the director of agriculture of the state of Washington determines that there exists an imminent danger of an infestation of plant pests or plant diseases which seriously endangers

the agricultural or horticultural industries of the state of Washington, or which seriously threatens life, health, or economic well-being, he shall request the governor to order emergency measures to control the pests or plant diseases pursuant to RCW 43.06.010(14). The director's findings shall contain an evaluation of the effect of the emergency measures upon public health.

(2) The director shall appoint a committee to advise him in the development of the criteria for determining when an emergency situation exists and the procedure for implementing emergency measures. The committee shall report back to the director within one hundred twenty days of April 1, 1982. The committee shall review emergency measures performed under the authority of RCW 43.06.010(14) and this section and make subsequent recommendations to the director. The committee shall include representatives of the agricultural industries, state and local government, public health interests, technical service providers, and environmental organizations. The public shall have access to the recommendations of the committee.

(3) Upon the order of the governor of the use of emergency measures, the director is authorized to apply such emergency measures to prevent, control, or eradicate plant pests or plant diseases that are now established or may later become established and that may seriously endanger the agricultural or horticultural industries, or which seriously threaten life, health, or economic well-being of the state of Washington. Such measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

(4) Upon the order of the governor of the use of emergency measures, the director is authorized to enter into agreements with individuals and/or companies to accomplish the prevention, control, or eradication of plant pests or plant diseases, notwithstanding the provisions of chapter 15.58 RCW or chapter 17.21 RCW or any other statute.

(5) The director shall continually evaluate the emergency measures taken and report to the governor at intervals of not less than ten days. The director shall immediately advise the governor if he finds that the emergency no longer exists or if certain emergency measures should be discontinued. [1982 c 153 § 2.]

Severability—1982 c 153: "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." [1982 c 153 § 5.]

Effective date—1982 c 153: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 c 153 § 7.]

17.24.210 Indemnity contracts for damages resulting from prevention, control, or eradication measures—Authorized—Conditions. The director of agriculture may, on the behalf of the state of Washington, enter into indemnity contracts wherein the state of Washington agrees to repay any person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide plant pest or plant disease prevention, control, or eradication measures as provided in this

chapter or any rule adopted pursuant to the provisions of this chapter, for losses and damages incurred as a result of such prevention, control, or eradication measures if all of the following conditions occur:

(1) At the time of the incident the worker is performing services as an emergency measures worker and is acting within the course of his duties as an emergency measures worker;

(2) At the time of the injury, loss, or damage, the organization providing emergency measures by which the worker is employed is an approved organization for providing emergency measures;

(3) The injury, loss, or damage is proximately caused by his service either with or without negligence as an emergency measures worker;

(4) The injury, loss, or damage is not caused by the intoxication of the worker; and

(5) The injury, loss, or damage is not due to wilful misconduct or gross negligence on the part of a worker.

Where an act or omission by an emergency services provider in the course of providing emergency services injures a person or property, the provider and the state may be jointly and severally liable for the injury, if state liability is proved under existing or hereafter enacted law.

Each person, firm, corporation, or other entity authorized to provide the prevention, control, or eradication measures implementing a program approved under RCW 17.24.200 shall be identified on a list approved by the director. For the purposes of this section, each person on the list shall be known, for the duration of the person's services under the program, as "an emergency measures worker." [1982 c 153 § 3.]

Severability—Effective date—1982 c 153: See notes following RCW 17.24.200.

Chapter 17.28

MOSQUITO CONTROL DISTRICTS

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17.28.010 Definitions. When used in this chapter, the following terms, words or phrases shall have the following meaning:

(1) "District" means any mosquito control district formed pursuant to this chapter.

(2) "Board" or "district board" means the board of trustees governing the district.

(3) "County commissioners" means the governing body of the county.

(4) "Unit" means all unincorporated territory in a proposed district in one county, regarded as an entity, or each city in a proposed district, likewise regarded as an entity.

(5) "Territory" means any city or county or portion of either or both city or county having a population of not less than one hundred persons.

(6) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof. [1957 c 153 § 1.]

17.28.020 Districts may be organized in counties—Petition, presentment, signatures. Any number of units of a territory within the state of Washington in Adams, Benton, Franklin, Grant, Kittitas, Walla Walla

and Yakima counties or any other county may be organized as a mosquito control district under the provisions of this chapter.

A petition to form a district may consist of any number of separate instruments which shall be presented at a regular meeting of the county commissioners of the county in which the greater area of the proposed district is located. Petitions shall be signed by registered voters of each unit of the proposed district, equal in number to not less than ten percent of the votes cast in each unit respectively for the office of governor at the last gubernatorial election prior to the time of presenting the petition. [1969 c 96 § 1; 1957 c 153 § 2.]

17.28.030 Petition method—Description of boundaries—Verification of signatures—Resolution to include city. Before a city can be included as a part of the proposed district its governing body shall have requested that the city be included by resolution, duly authenticated.

The petition shall set forth and describe the boundaries of the proposed district and it shall request that it be organized as a mosquito control district. Upon receipt of such a petition, the auditor of the county in which the greater area of the proposed district is located shall be charged with the responsibility of examining the same and certifying to the sufficiency of the signatures thereon. For the purpose of examining the signatures on such petitions, the auditor shall be permitted access to the voters' registration books of each city and county located in the proposed district and may appoint the respective county auditors and city clerks thereof as his deputies. No person may withdraw his name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the board of commissioners of the county in which the greater area of the proposed district is located, together with his certificate as to the sufficiency thereof. [1957 c 153 § 3.]

17.28.040 Petition method—Publication of petition and notice of meeting. Upon receipt of a duly certified petition, the board of commissioners shall cause the text of the petition to be published once a week for at least three consecutive weeks in one or more newspapers of general circulation within the county where the petition is presented and at each city a portion of which is included in the proposed district. If any portion of the proposed district lies in another county, the petition and notice shall be likewise published in that county.

Only one copy of the petition need be published even though the district embraces more than one unit. No more than five of the names attached to the petition need appear in the publication of the petition and notice, but the number of signers shall be stated.

With the publication of the petition there shall be published a notice of the time of the meeting of the county commissioners when the petition will be considered, stating that all persons interested may appear and be heard. [1957 c 153 § 4.]

17.28.050 Resolution method. Such districts may also be organized upon the adoption by the county commissioners of a resolution of intention so to do, in lieu of the procedure hereinbefore provided for the presentation of petitions. In the event the county commissioners adopt a resolution of intention, such resolution shall describe the boundaries of the proposed district and shall set a time and place at which they will consider the organization of the district, and shall state that all persons interested may appear and be heard. Such resolution of intention shall be published in the same manner and for the same length of time as a petition. [1957 c 153 § 5.]

17.28.060 Hearing—Defective petition—Establishment of boundaries. At the time stated in the notice of the filing of the petition or the time mentioned in the resolution of intention, the county commissioners shall consider the organization of the district and hear those appearing and all protests and objections to it. The commissioners may adjourn the hearing from time to time, not exceeding two months in all.

No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures thereto, shall vitiate any proceedings if the petition has a sufficient number of qualified signatures.

On the final hearing the county commissioners shall make such changes in the proposed boundaries as are advisable, and shall define and establish the boundaries. [1957 c 153 § 6.]

17.28.070 Procedure to include other territory. If the county commissioners deem it proper to include any territory not proposed for inclusion within the proposed boundaries, they shall first cause notice of intention to do so to be mailed to each owner of land in the territory whose name appears as owner on the last completed assessment roll of the county in which the territory lies, addressed to the owner at his address given on the assessment roll, or if no address is given, to his last known address; or if it is not known, at the county seat of the county in which his land lies. The notice shall describe the territory and shall fix a time, not less than two weeks from the date of mailing, when all persons interested may appear before the county commissioners and be heard.

The boundaries of a district lying in a city shall not be altered unless the governing board of the city, by resolution, consents to the alteration. [1957 c 153 § 7.]

17.28.080 Determination of public necessity and compliance with chapter. Upon the hearing of the petition the county commissioners shall determine whether the public necessity or welfare of the proposed territory and of its inhabitants requires the formation of the district, and shall also determine whether the petition complies with the provisions of this chapter, and for that purpose shall hear all competent and relevant testimony offered. [1957 c 153 § 8.]

17.28.090 Declaration establishing and naming district—Election to form district—Establishment of

district. If, from the testimony given before the county commissioners, it appears to that board that the public necessity or welfare requires the formation of the district, it shall, by an order entered on its minutes, declare that to be its finding, and shall further declare and order that the territory within the boundaries so fixed and determined be organized as a district, under an appropriate name to be selected by the county commissioners, subject to approval of the voters of the district as hereinafter provided. The name shall contain the words "mosquito control district."

At the time of the declaration establishing and naming the district, the county commissioners shall by resolution call a special election to be held not less than thirty days and not more than sixty days from the date thereof, and shall cause to be published a notice of such election at least once a week for three consecutive weeks in a newspaper of general circulation in the county, setting forth the hours during which the polls will be open, the boundaries of the proposed district as finally adopted, and the object of the election. If any portion of the proposed district lies in another county, a notice of such election shall likewise be published in that county.

The election on the formation of the mosquito control district shall be conducted by the auditor of the county in which the greater area of the proposed district is located in accordance with the general election laws of the state and the results thereof shall be canvassed by that county's canvassing board. For the purpose of conducting an election under this section, the auditor of the county in which the greater area of the proposed district is located may appoint the auditor of any county or the city clerk of any city lying wholly or partially within the proposed district as his deputies. No person shall be entitled to vote at such election unless he is a qualified voter under the laws of the state in effect at the time of such election and has resided within the mosquito control district for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall a mosquito control district be established for the area described in a resolution of the board of commissioners of _____ county adopted on the _____ day of _____, 19__?

YES
NO

If a majority of the persons voting on the proposition shall vote in favor thereof, the mosquito control district shall thereupon be established and the county commissioners of the county in which the greater area of the district is situated shall immediately file for record in the office of the county auditor of each county in which any portion of the land embraced in the district is situated, and shall also forward to the county commissioners of each of the other counties, if any, in which any portion of the district is situated, and also shall file with the secretary of state, a certified copy of the order of the county commissioners. From and after the date of the filing of the certified copy with the secretary of state, the district named therein is organized as a district, with

all the rights, privileges, and powers set forth in this chapter, or necessarily incident thereto.

If a majority of the persons voting on the proposition shall vote in favor thereof, all expenses of the election shall be paid by the mosquito control district when organized. If the proposition fails to receive a majority of votes in favor, the expenses of the election shall be borne by the respective counties in which the district is located in proportion to the number of votes cast in said counties. [1957 c 153 § 9.]

17.28.100 Election on proposition to levy tax. At the same election there shall be submitted to the voters residing within the district, for their approval or rejection, a proposition authorizing the mosquito control district, if formed, to levy at the earliest time permitted by law on all taxable property located within the mosquito control district a general tax, for one year, of up to twenty-five cents per thousand dollars of assessed value in excess of any constitutional or statutory limitation for authorized purposes of the mosquito control district. The proposition shall be expressed on the ballots in substantially the following form:

"ONE YEAR _____ CENTS PER THOUSAND DOLLARS OF ASSESSED VALUE LEVY

"Shall the mosquito control district, if formed, levy a general tax of _____ cents per thousand dollars of assessed value for one year upon all the taxable property within said district in excess of the constitutional and/or statutory tax limits for authorized purposes of the district?"

YES
NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the persons voting on the proposition to levy such tax in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. [1982 c 217 § 1; 1973 1st ex.s. c 195 § 2; 1957 c 153 § 10.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

17.28.110 Board of trustees—Composition. Within thirty days after the filing with the secretary of state of the certified copy of the order of formation, a governing board of trustees for the district shall be appointed. The district board shall be appointed as follows:

(1) If the district is situated in one county only and consists wholly of unincorporated territory, five members shall be appointed by the county commissioners of the county.

(2) If the district is situated entirely in one county and includes both incorporated and unincorporated territory one member shall be appointed from each commissioner district lying wholly or partly within the district by the county commissioners of the county, and one member from each city, the whole or part of which is situated in the district, by the governing body of the

city; but if the district board created consists of less than five members, the county commissioners shall appoint from the district at large enough additional members to make a board of five members.

(3) If the district is situated in two or more counties and is comprised wholly of incorporated territory, one member shall be appointed from each commissioner district of each county or portion of a county situated in the district by the county commissioners; but if the district board created consists of less than five members, the county commissioners of the county in which the greater area of the district is situated shall appoint from the district at large enough additional members to make a board of five members.

(4) If the district is situated in two or more counties and consists of both incorporated and unincorporated territory, one member shall be appointed by the county commissioners of each of the counties from that portion of the district lying within each commissioner district within its jurisdiction; and one member from each city, a portion of which is situated in the district by the governing body of the city; but if the board created consists of less than five members, the county commissioners in which the greater area of the district is situated shall appoint from the district at large enough additional members to make a board of five members. [1959 c 64 § 1; 1957 c 153 § 11.]

17.28.120 Board of trustees—Name of board—Qualification of members. The district board shall be called "The board of trustees of ----- mosquito control district."

Each member of the board appointed by the governing body of a city shall be an elector of the city from which he is appointed and a resident of that portion of the city which is in the district.

Each member appointed from a county or portion of a county shall be an elector of the county and a resident of that portion of the county which is in the district.

Each member appointed at large shall be an elector of the district. [1957 c 153 § 12.]

17.28.130 Board of trustees—Terms—Vacancies. The members of the first board in any district shall classify themselves by lot at their first meeting so that:

(1) If the total membership is an even number, the terms of one-half the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.

(2) If the total membership is an odd number, the terms of a bare majority of the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.

The term of each subsequent member is two years from and after the expiration of the term of his predecessor.

In event of the resignation, death, or disability of any member, his successor shall be appointed by the governing body which appointed him. [1957 c 153 § 13.]

17.28.140 Board of trustees—Organization—Officers—Compensation—Expenses. The members of the first district board shall meet on the first Monday subsequent to thirty days after the filing with the secretary of state of the certificate of incorporation of the district. They shall organize by the election of one of their members as president and one as secretary.

The members of the district board shall serve without compensation; but the necessary expenses of each member for actual traveling in connection with meetings or business of the board may be allowed and paid.

The secretary shall receive such compensation as shall be fixed by the district board. [1957 c 153 § 14.]

17.28.150 Board of trustees—Meetings—Rules—Quorum. The district board shall provide for the time and place of holding its regular meetings, and the manner of calling them, and shall establish rules for its proceedings.

Special meetings may be called by three members, notice of which shall be given to each member at least twenty-four hours before the meeting.

All of its sessions, whether regular or special, shall be open to the public.

A majority of the members shall constitute a quorum for the transaction of business. [1957 c 153 § 15.]

17.28.160 Powers of district. A mosquito control district organized under this chapter may:

(1) Take all necessary or proper steps for the extermination of mosquitoes.

(2) Subject to the paramount control of the county or city in which they exist, abate as nuisances all stagnant pools of water and other breeding places for mosquitoes.

(3) If necessary or proper, in the furtherance of the objects of this chapter, build, construct, repair, and maintain necessary dikes, levees, cuts, canals, or ditches upon any land, and acquire by purchase, condemnation, or by other lawful means, in the name of the district, any lands, rights of way, easements, property, or material necessary for any of those purposes.

(4) Make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the use or taking of property for dikes, levees, cuts, canals, or ditches.

(5) Enter upon without hindrance any lands within the district for the purpose of inspection to ascertain whether breeding places of mosquitoes exist upon such lands; or to abate public nuisances in accordance with this chapter; or to ascertain if notices to abate the breeding of mosquitoes upon such lands have been complied with; or to treat with oil or other larvicidal material any breeding places of mosquitoes upon such lands.

(6) Sell or lease any land, rights of way, easements, property or material acquired by the district.

(7) Issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board payable annually or semiannually as the board may prescribe.

(8) Make contracts with the United States, or any state, municipality, or any department of those entities for carrying out the general purpose for which the district is formed.

(9) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes.

(10) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants; and publish information or literature and do any and all other things necessary or incident to the powers granted by, and to carry out the projects specified in this chapter. [1981 c 156 § 1; 1957 c 153 § 16.]

17.28.170 Mosquito breeding places declared public nuisance—Abatement. Any breeding place for mosquitoes which exists by reason of any use made of the land on which it is found or of any artificial change in its natural condition is a public nuisance: *Provided*, That conditions or usage of land which are beyond the control of the landowner or are not contrary to normal, accepted practices of water usage in the district, shall not be considered a public nuisance.

The nuisance may be abated in any action or proceeding, or by any remedy provided by law. [1959 c 64 § 2; 1957 c 153 § 17.]

17.28.250 Interference with entry or work of district—Penalty. Any person who obstructs, hinders, or interferes with the entry upon any land within the district of any officer or employee of the district in the performance of his duty, and any person who obstructs, interferes with, molests, or damages any work performed by the district, is guilty of a misdemeanor. [1957 c 153 § 25.]

17.28.251 Borrowing money or issuing warrants in anticipation of revenue. A mosquito control district may, prior to the receipt of taxes raised by levy, borrow money or issue warrants of the district in anticipation of revenue, and such warrants shall be redeemed from the first money available from such taxes. [1959 c 64 § 3.]

17.28.252 Excess levy authorized. A mosquito control district shall have the power to levy additional taxes in excess of the constitutional and/or statutory limitations for any of the authorized purposes of such district, not in excess of fifty cents per thousand dollars of assessed value per year when authorized so to do by the electors of such district by a three-fifths majority of those voting on the proposition in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended at such time as may be fixed by the board of trustees for the district, which special election may be called by the board of trustees of the district, at which special election the proposition of authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "Yes" and those opposing thereto to vote "No". Nothing herein

shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. [1973 1st ex.s. c 195 § 3; 1959 c 64 § 4.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

17.28.253 District boundaries for tax purposes. For the purpose of property taxation and the levying of property taxes the boundaries of the mosquito control district shall be the established official boundary of such district existing on the first day of September of the year in which the levy is made, and no such levy shall be made for any mosquito control district whose boundaries are not duly established on the first day of September of such year. [1959 c 64 § 5.]

17.28.254 Abatement, extermination declared necessity and benefit to land. It is hereby declared that whenever the public necessity or welfare has required the formation of a mosquito control district, the abatement or extermination of mosquitoes within the district is of direct, economic benefit to the land located within such district and is necessary for the protection of the public health, safety and welfare of those residing therein. [1959 c 64 § 6.]

17.28.255 Classification of property—Assessments. The board of trustees shall annually determine the amount of money necessary to carry on the operations of the district and shall classify the property therein in proportion to the benefits to be derived from the operations of the district and in accordance with such classification shall apportion and assess the several lots, blocks, tracts, and parcels of land or other property within the district, which assessment shall be collected with the general taxes of the county or counties. [1959 c 64 § 7.]

17.28.256 Assessments—Roll, hearings, notices, objections, appeal, etc. The board of trustees in assessing the property within the district and the rights, duties and liabilities of property owners therein shall be governed, insofar as is consistent with this chapter, by the provisions for county road improvement districts as set forth in RCW 36.88.090 through 36.88.110. [1959 c 64 § 8.]

17.28.257 Assessments—Payment, lien, delinquencies, foreclosure, etc. The provisions of RCW 36.88.120, 36.88.140, 36.88.150, 36.88.170 and 36.88.180 governing the liens, collection, payment of assessments, delinquent assessments, interest and penalties, lien foreclosure and foreclosed property of county road improvement districts shall govern such matters as applied to mosquito control districts. [1959 c 64 § 9.]

17.28.258 County treasurer—Duties. The county treasurer shall collect all mosquito control district assessments, and the duties and responsibilities herein imposed upon him shall be among the duties and responsibilities of his office for which his bond is given as county treasurer. The collection and disposition of

revenue from such assessments and the depository thereof shall be the same as for tax revenues of such districts as provided in RCW 17.28.270. [1959 c 64 § 10.]

17.28.260 General obligation bonds—Excess property tax levies. A mosquito control district shall have the power to issue general obligation bonds and to pledge the full faith and credit of the district to the payment thereof, for authorized capital purposes of the mosquito control district, and to provide for the retirement thereof by excess property tax levies whenever a proposition authorizing both the issuance of such bonds and the imposition of such excess levies has been approved by the voters of the district, at an election held pursuant to RCW 39.36.050, by three-fifths of the persons voting on said proposition at said election at which such election the total number of persons voting on such bond proposition shall constitute not less than forty percent of the total number of votes cast within the area of said mosquito control district at the last preceding county or state general election. Mosquito control districts may become indebted for capital purposes up to an amount equal to one and one-fourth percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015.

Such bonds shall never be issued to run for a longer period than ten years from the date of issue and shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 5; 1983 c 167 § 18; 1973 1st ex.s. c 195 § 4; 1970 ex.s. c 56 § 5; 1969 ex.s. c 232 § 65; 1957 c 153 § 26.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

17.28.270 Collection, disposition, of revenue—Depository. All taxes levied under this chapter shall be computed and entered on the county assessment roll and collected at the same time and in the same manner as other county taxes. When collected, the taxes shall be paid into the county treasury for the use of the district.

If the district is in more than one county the treasury of the county in which the district is organized is the depository of all funds of the district.

The treasurers of the other counties shall, at any time, not oftener than twice each year, upon the order of the district board settle with the district board and pay over to the treasurer of the county where the district is organized all money in their possession belonging to the district. The last named treasurer shall give a receipt for the money and place it to the credit of the district. [1957 c 153 § 27.]

17.28.280 Withdrawal of funds. The funds shall only be withdrawn from the county treasury depository upon the warrant of the district board signed by its president

or acting president, and countersigned by its secretary. [1957 c 153 § 28.]

17.28.290 Matching funds. Any part or all of the taxes collected for use of the district may be used for matching funds made available to the district by county, state, or federal governmental agencies. [1957 c 153 § 29.]

17.28.300 Expenses of special elections. All expenses of any special election conducted pursuant to the provisions of this chapter shall be paid by the mosquito control district. [1957 c 153 § 30.]

17.28.310 Annual certification of assessed valuation. It shall be the duty of the assessor of each county lying wholly or partially within the district to certify annually to the board the aggregate assessed valuation of all taxable property in his county situated in any mosquito control district as the same appears from the last assessment roll of his county. [1957 c 153 § 31.]

17.28.320 Annexation of territory authorized—Consent by city. Any territory contiguous to a district may be annexed to the district.

If the territory to be annexed is in a city, consent to the annexation shall first be obtained from the governing body of the city. An authenticated copy of the resolution or order of that body consenting to the annexation shall be attached to the annexation petition. [1957 c 153 § 32.]

17.28.330 Annexation of territory authorized—Petition—Hearing—Boundaries. The district board, upon receiving a written petition for annexation containing a description of the territory sought to be annexed, signed by registered voters in said territory equal in number to at least ten percent of the number of votes cast in the territory for the office of governor at the last gubernatorial election prior to the time the petition is presented, shall set the petition for hearing. It shall publish notice of the hearing along with a copy of the petition, stating the time and place set for the hearing, in each county in which any part of the district or of the territory is situated, and in each city situated wholly or in part in the territory. Not more than five of the names attached to the petition need appear in the publication, but the number of signers shall be stated.

At the time set for the hearing the district board shall hear persons appearing in behalf of the petition and all protests and objections to it. The district board may adjourn the hearing from time to time, but not exceeding two months in all.

On the final hearing the district board shall make such changes as it believes advisable in the boundaries of the territory, and shall define and establish the boundaries. It shall also determine whether the petition meets the requirements of this chapter. [1957 c 153 § 33.]

17.28.340 Annexation of territory authorized—Order of annexation—Election. If upon the hearing

the district board finds that the petition and the proceedings thereon meet the requirements of this chapter and that it is desirable and to the interests of the district and of the territory proposed to be annexed that the territory, with boundaries as fixed and determined by the district board, or any portion of it, should be annexed to the district, the board shall order the boundaries of the district changed to include the territory, or portion of the territory, subject to approval of the electors of the territory proposed to be annexed. The election to be conducted and the returns canvassed and declared insofar as is practicable in accordance with the requirements of this chapter for the formation of a district. The expenses of such election shall be borne by the mosquito control district regardless of the outcome of the election.

The order of annexation shall describe the boundaries of the annexed territory and that portion of the boundary of the district which coincides with any boundary of the territory. If necessary in making this order, the board may have any portion of the boundaries surveyed.

If more than one petition for the annexation of the territory has been presented, the district board may in one order include in the district any number of separate territories. [1957 c 153 § 34.]

17.28.350 Annexation of territory authorized—Filing of order—Composition of board. The order of annexation shall be entered in the minutes of the board and certified copies shall be filed with the secretary of state and with the county clerk and county auditor of each county in which the district or any part of it is situated.

From and after the date of the filing and recording of the certified copies of the order, the territory described in the order is a part of the district, with all the rights, privileges, and powers set forth in this act and those necessarily incident thereto.

After the annexation of territory to a district, the district board shall consist of the number of members and shall be appointed in the manner prescribed by this chapter for a district formed originally with boundaries embracing the annexed territory. However, the members of the district board in office at the time of the annexation shall continue to serve as members during the remainder of the terms for which they were appointed. [1957 c 153 § 35.]

17.28.360 Consolidation of districts—Initial proceedings. Whenever in the judgment of the district board it is for the best interests of the district that it be consolidated with one or more other districts, it may, by a two-thirds vote of its members, adopt a resolution reciting that fact and declaring the advisability of such consolidation and the willingness of the board to consolidate. The resolution shall be sent to the board of each district with which consolidation is proposed.

The board of each district to which a proposal of consolidation is sent shall consider said proposal and give notice of its decision to the proposing board. [1957 c 153 § 36.]

17.28.370 Consolidation of districts—Concurrent resolution. Should it appear that two-thirds of the members of each of the boards of districts proposed to be consolidated favor consolidation each of said boards shall then, by a vote of not less than two-thirds of its members adopt a concurrent resolution in favor of consolidation, declaring its willingness to consolidate, specifying a name for the consolidated district. Immediately upon the adoption of said concurrent resolution a copy of same signed by not less than two-thirds of the members of each board shall be forwarded to the county commissioners of the county in which all of or a major portion of the land of all, the districts consolidated are situated. [1957 c 153 § 37.]

17.28.380 Consolidation of districts—Election. When the concurrent resolution for consolidation has been adopted, each board of the districts proposed for consolidation shall forthwith call a special election in its district in which shall be presented to the electors of the districts the question whether the consolidation shall be effected.

The election shall be conducted and the returns canvassed and declared insofar as is practicable in accordance with the requirements of this chapter for the formation of a district.

The board of each district shall declare the returns of the election in its district, and shall certify the results to the county commissioners of the county in which all the districts, or the major portion of the land of all the districts, are situated. [1957 c 153 § 38.]

17.28.390 Consolidation of districts—Order of consolidation. Should not less than two-thirds of the votes of each of the respective districts proposed to be consolidated favor consolidation the county commissioners shall immediately:

(1) Enter an order on its minutes consolidating all of the districts proposed for consolidation into one district with name as specified in the concurrent resolution.

(2) Transmit a certified copy of the order to the county commissioners of any other county in which any portion of the consolidated district is situated.

(3) Record a copy in the office of the county auditor of each of the counties in which any portion of the consolidated district is situated.

(4) File a copy in the office of the secretary of state.

After the transmission, recording and filing of the order, the territory in the districts entering into the consolidation proposal forms a single consolidated district. [1957 c 153 § 39.]

17.28.400 Consolidation of districts—Composition of board. After the consolidation, the board of the consolidated district shall consist of the number and shall be appointed in the manner prescribed by this chapter for a district originally formed.

The terms of the members of the district boards of the several districts consolidated who are in office at the time of consolidation shall terminate at the time the consolidation becomes effective. [1957 c 153 § 40.]

17.28.410 Consolidation of districts—Powers of consolidated district—Indebtedness of former districts. The consolidated district has all the rights, powers, duties, privileges and obligations of a district formed originally under the provisions of this chapter.

If at the time of consolidation there is outstanding an indebtedness of any of the former districts included in the consolidated district, that indebtedness shall be paid in the manner provided for the payment of indebtedness upon dissolution of a district.

A consolidated district shall not be liable for any indebtedness of any of the former districts included in it which was outstanding at the time of consolidation.

No property in any of the former districts shall be taxed to pay any indebtedness of any other former district existing at the date of the consolidation. [1957 c 153 § 41.]

17.28.420 Dissolution—Election. The district may at any time be dissolved upon the vote of two-thirds of the qualified electors in the district at a special election called by the district board upon the question. The question shall be submitted as, "Shall the district be dissolved?", or words to that effect.

Notice of the election shall be published at least once a week for at least four weeks prior to the date of the election in a newspaper of general circulation in each county of the district. [1957 c 153 § 42.]

17.28.430 Dissolution—Result of election to be certified—Certificate of dissolution. Should two-thirds or more of the votes at the election favor dissolution the district board shall certify that fact to the secretary of state. Upon receipt of such certification the secretary of state shall issue his certificate reciting that the district (naming it) has been dissolved, and shall transmit to and file a copy with the county clerk of each county in which any portion of the district is situated.

After the date of the certificate of the secretary of state, the district is dissolved. [1957 c 153 § 43.]

17.28.440 Dissolution—Disposition of property. If the district at the time of dissolution was wholly within unincorporated territory in one county, its property vests in that county.

If the district at the time of dissolution was situated wholly within the boundaries of a single city, its property vests in that city.

If the district at the time of dissolution comprised only unincorporated territory in two or more counties, its property vests in those counties in proportion to the assessed value of each county's property within the boundaries of the district as shown on the last equalized county assessment roll.

If the district at the time of dissolution comprised both incorporated and unincorporated territory, its property vests in each unit in proportion as its assessed property value lies within the boundaries of the district: *Provided, however,* That any real property, easements,

or rights of way vest in the city in which they are situated or in the county in which they are situated. [1957 c 153 § 44.]

17.28.450 Dissolution—Collection of taxes to discharge indebtedness. If, at the time of election to dissolve, a district has outstanding any indebtedness, the vote to dissolve the district dissolves it for all purposes except the levy and collection of taxes for the payment of the indebtedness, and expenses of assessing, levying, and collecting such taxes.

Until the indebtedness is paid, the county commissioners of the county in which the greater portion of the district was situated shall act as the ex officio district board and shall levy taxes and perform such functions as may be necessary in order to pay the indebtedness. [1957 c 153 § 45.]

17.28.900 Severability—1957 c 153. If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included therein, if any such remaining part can then be administered in furtherance of the purposes of this chapter. [1957 c 153 § 46.]

Chapter 17.34

PEST CONTROL COMPACT

Sections	
17.34.010	Compact provisions.
17.34.020	Cooperation with insurance fund authorized.
17.34.030	Filing of bylaws and amendments.
17.34.040	Compact administrator.
17.34.050	Requests or applications for assistance from insurance fund.
17.34.060	Agency incurring expenses to be credited with payments to this state.
17.34.070	"Executive head" defined.

17.34.010 Compact provisions. The pest control compact is hereby enacted into law and entered into with all other jurisdiction legally joining therein in the form substantially as follows:

ARTICLE I—FINDINGS

The party states find that:

1. In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

2. Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

3. The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

4. While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

ARTICLE II—DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

1. "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

2. "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

3. "Responding state" means a state request to undertake or intensify the measures referred to in subdivision (2) of this Article.

4. "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

5. "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact.

6. "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

7. "Executive Committee" means the committee established pursuant to Article V(E) of this compact.

ARTICLE III—THE INSURANCE FUND

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

ARTICLE IV

THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT

A. The Insurance Fund shall be administered by a Governing Board and Executive Committee as

hereinafter provided. The actions of the Governing Board and Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.

- B. The members of the Governing Board shall be entitled to one vote each on such Board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.
- C. The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.
- D. The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provisions for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.
- E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.
- F. The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.
- G. The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (F) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.
- H. The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and rescind these bylaws. The Insurance Fund shall publish its bylaws

in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

- I. The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.
- J. In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

ARTICLE V

COMPACT AND INSURANCE FUND ADMINISTRATION

- A. In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:
 - 1. Assist in the coordination of activities pursuant to the compact in his state; and
 - 2. Represent his state on the Governing Board of the Insurance Fund.
- B. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or on the Executive Committee thereof.
- C. The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.
- D. At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.
- E. The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United

States on the Governing Board one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

ARTICLE VI—ASSISTANCE AND REIMBURSEMENT

- A. Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:
 - 1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.
 - 2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.
- B. Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.
- C. In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:
 - 1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.
 - 2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivision, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the Governing Board may require consistent with the provisions of this compact.

- D. The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.
- E. Upon the submission as required by paragraph (C) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or the Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.
- F. A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

- G. Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.
- H. Before authorizing the expenditure of moneys from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the Federal Government and shall request the appropriate agency or agencies of the Federal Government for such assistance and participation.
- I. The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states and any other entities concerned.

ARTICLE VII—ADVISORY AND TECHNICAL COMMITTEES

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the Governing Board or Executive Committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

ARTICLE VIII

RELATIONS WITH NONPARTY JURISDICTIONS

- A. A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.
- B. At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI(D) of this compact a nonparty

state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

- C. The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

ARTICLE IX—FINANCE

- A. The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.
- B. Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.
- C. The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account". The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all moneys not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata

basis in such manner as to keep the Claims Account within such maximum limit. Any moneys in the Claims Account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

- D. The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(G) of this compact, provided that the Governing Board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of moneys available to it under Article IV(G) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.
- E. The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.
- F. The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

ARTICLE X—ENTRY INTO FORCE AND WITHDRAWAL

- A. This compact shall enter into force when enacted into law by any five or more states: provided, that one such state is contiguous to this state and the legislature has appropriated the necessary funds. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.
- B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE XI—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government,

agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1969 ex.s. c 130 § 1.]

17.34.020 Cooperation with insurance fund authorized. Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the Pest Control Compact. [1969 ex.s. c 130 § 2.]

17.34.030 Filing of bylaws and amendments. Pursuant to Article IV(H) of the compact, copies of bylaws and amendments thereto shall be filed with the code reviser's office. [1969 ex.s. c 130 § 3.]

17.34.040 Compact administrator. The compact administrator for this state shall be the director of agriculture. The duties of the compact administrator shall be deemed a regular part of his office. [1969 ex.s. c 130 § 4.]

17.34.050 Requests or applications for assistance from insurance fund. Within the meaning of Article VI(B) or VIII(A), a request or application for assistance from the insurance fund may be made by the director of agriculture whenever in his judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request. [1969 ex.s. c 130 § 5.]

17.34.060 Agency incurring expenses to be credited with payments to this state. The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his account in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof. [1969 ex.s. c 130 § 6.]

17.34.070 "Executive head" defined. As used in the compact, with reference to this state, the term "executive head" shall mean the director of agriculture. [1969 ex.s. c 130 § 7.]